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Mr. FAULKNER. When will you hear us in regard to Mr. Gordon's bill? We can appear at any time that is convenient to Mr. Gordon and to the committee.

The CHAIRMAN. We will hear you on the Gordon bill on any of the days this week.

Mr. FAULKNER. Then we will take Saturday for that.

The CHAIRMAN. If you get through the other bills before that.

Without objection, the committee will now stand adjourned until to-morrow morning in this room at 10 o'clock.

(Thereupon, at 11.40 o'clock a. m., the committee adjourned, to meet to-morrow morning at 11 o'clock in the committee room at the Capitol.)

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# HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

## INTERSTATE COMMERCE

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### PART XIV

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WASHINGTON  
GOVERNMENT PRINTING OFFICE

1910

**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES.**

**JAMES R. MANN, ILLINOIS, *Chairman*.**

**IRVING P. WANGER, PENNSYLVANIA.  
FREDERICK C. STEVENS, MINNESOTA.**

**JOHN J. ESCH, WISCONSIN.**

**CHARLES E. TOWNSEND, MICHIGAN**

**JAMES KENNEDY, OHIO.**

**JOSEPH R. KNOWLAND, CALIFORNIA.**

**WILLIAM P. HUBBARD, WEST VIRGINIA.**

**JAMES M. MILLER, KANSAS.**

**WILLIAM H. STAFFORD, WISCONSIN.**

**WILLIAM M. CALDER, NEW YORK.**

**CHARLES G. WASHBURN, MASSACHUSETTS.**

**WILLIAM C. ADAMSON, GEORGIA.**

**WILLIAM RICHARDSON, ALABAMA.**

**CHARLES L. BARTLETT, GEORGIA.**

**GORDON RUSSELL, TEXAS.**

**THETUS W. SIMS, TENNESSEE.**

**ANDREW J. PETERS, MASSACHUSETTS.**

## BILLS AFFECTING INTERSTATE COMMERCE.

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES,  
*Washington, D. C., Wednesday, February 9, 1910.*

The committee met this day at 10 o'clock a. m., Hon. Irving P. Wanger in the chair.

Mr. WANGER. The committee will be in order. Are you ready to proceed, gentlemen?

Mr. THOMAS P. LITTLEPAGE. Mr. Chairman, I believe Mr. Pierce, the general solicitor of the Rock Island, is to make an argument, but I presume he must have gone to the other room in the other building. He was to be here. I have sent a gentleman over there to see if he is there. He will probably be here in a few minutes.

Mr. TOWNSEND. Can anybody go on until he comes?

Mr. LITTLEPAGE. I do not know of anyone else, Mr. Townsend, to go on in his absence.

Mr. CHARLES J. FAULKNER. I have received a letter from those roads that I represent this morning. It was the first definite information I had received at all in reference to this subject, and the communication stated that it would be utterly impossible for the gentlemen whom I had requested to come before the committee, either to-day, to-morrow, or Saturday, to be here this week. I want to be perfectly frank with the committee. The letter did not state that they could be here next week, and consequently it left indefinite, so far as those I represent are concerned, the matter of their being present at the hearings next week, even if they could be given next week, and therefore I could not ask anything of the committee at this time.

Mr. LITTLEPAGE. Mr. Pierce is thoroughly informed on these matters, Mr. Chairman.

Mr. WANGER. He is the Rock Island man?

Mr. LITTLEPAGE. Yes. He is the general solicitor of the Rock Island, and he has given a great deal of attention to these interstate commerce matters, and has written a book on the subject.

Mr. TOWNSEND. You do not suppose he is going to get that book into the record do you?

Mr. LITTLEPAGE. No, sir; I do not apprehend that he will try to impose on the record in that way.

[At this point Hon. James R. Mann, chairman of the committee, entered the room and assumed the chair.]

Mr. LITTLEPAGE. Mr. Chairman, there seems to be some misunderstanding, probably. Mr. Pierce intended to make an argument this morning. He got back to the city last night, and I apprehend he must be mistaken about the time of the hearing, or something of that

kind. I have sent over to the other room to see if he perhaps has gone over there by mistake, and Mr. Drayton informs me that he is not there. I will try to get in touch with him. He is stopping at the New Willard.

The CHAIRMAN. Who is Mr. Pierce?

Mr. LITTLEPAGE. He is the general solicitor of the Rock Island. I know he expected to make an argument on the Townsend bill. I know I communicated with him yesterday. Those were my instructions then.

Mr. STAFFORD. I wish Mr. Faulkner would repeat to you, Mr. Chairman, what he has already said to us about his clients not being able to appear this week or next week.

Mr. FAULKNER. Yes, Mr. Chairman; I made a statement that I had received a communication this morning from those I represent, in which they stated that it would be impossible for the parties I requested to be here at the hearing to-day, to-morrow, and Saturday on the two bills to be heard this week, and they expressed a doubt in the letter as to whether they would be able to be here next week.

The CHAIRMAN. I understand from that, to be perfectly plain with you, that the railroads are not opposed to the administration bill—you railroad people.

Mr. LITTLEPAGE. I would not say that, Mr. Chairman.

The CHAIRMAN. I am talking about the Senator's people.

Mr. FAULKNER. I have no instructions as to what their position is on the subject, but simply say what I communicated to the committee a moment ago and previously.

The CHAIRMAN. Yes; but we have notified people for weeks that we would hear them at a certain time, and if they tell us they are not prepared to appear, it is obvious that they are not opposed to the propositions. I have never known the railroad companies to lack in diligence in opposing these measures, large or small, before the committee when they were not in favor of them.

Mr. LITTLEPAGE. I can say, Mr. Chairman, along this line, that it was the intention of the Rock Island people to present arguments on this bill. I was notified to that effect yesterday, and Mr. Pierce is in the city for that purpose. You will remember, perhaps, that he appeared before the committee last Saturday, and I know that he intended to be here this morning. I can say that in good faith, because I know it to be true. I do not know anything about the Senator's clients.

Mr. RICHARDSON. Did he have any special features of the Townsend bill in mind that he was going to discuss, or just the whole bill?

Mr. LITTLEPAGE. I think he was going to discuss a number of the features of the bill. The counsel of the Rock Island, I think, was going to discuss the bond feature, and Mr. Pierce the general interstate-commerce features of it. He is a gentleman very competent to do that.

Mr. RICHARDSON. I would like mightily to hear him.

The CHAIRMAN. Mr. Neale, do you appear in opposition to the bills?

Mr. S. C. NEALE. No, sir; I can not say that I appear either in advocacy of or opposition to the bills. The position of the Pennsylvania Railroad is a position of quiescence, not acquiescence.

The CHAIRMAN. What is your attitude, Mr. Paulding?

Mr. CHARLES C. PAULDING. Our attitude is very much the same, Mr. Chairman, as Mr. Neale has said the attitude of the Pennsylvania Railroad is. There are some features about which we would like to be heard later, but I can say practically that at present we have no instructions.

The CHAIRMAN. I do not see where you will have opportunity with reference to these bills later, because we are endeavoring to close up the hearings now as rapidly as possible, and if you wish to be heard—and you do not wish it, I understand now—you must not complain if we do not permit you to do it later.

Mr. PAULDING. Oh, no; I will not complain. I am not in a position now, however, to appear.

Mr. RICHARDSON. You have no objection, then, with reference to the consideration of the bill?

Mr. PAULDING. I have no particular instructions.

Mr. RICHARDSON. You are just here to be informed?

Mr. PAULDING. Yes.

Mr. RICHARDSON. That is a very proper position to be in.

Mr. LITTLEPAGE. Mr. Chairman, I believe if the chairman of the committee would draw the conclusion that all the railroads are not opposed to the bill, it would be an erroneous conclusion. I do not know what the difference between the eastern and the western roads may be, but—

The CHAIRMAN. I do not know why we could not draw that conclusion when we have notified the railroads all over the United States with reference to the bills, and notified their representatives in Washington, and given them ample opportunity to be heard, and when the time comes no one appears for hearing and no one wants to be heard in opposition.

Mr. LITTLEPAGE. Mr. Chairman, the railroads have a lot of very busy men down here, and when they do that you perhaps know they do it at an expense somewhere to their business.

The CHAIRMAN. The railroads can appear and bring in 50 or 60 people in opposition to a bill in relation to car stakes, and a great many witnesses in relation to some other matter of minor importance, and it seems certain that they can not be more busily engaged when a question comes up that it regards as important on the operation of the roads.

Mr. LITTLEPAGE. There is a difference, I believe, in the case of men able to talk about car stake matters and these other matters. A practical railroad man who handles cars can testify on matters relating to car stakes, and the railroads have enough of men to speak on such a question.

The CHAIRMAN. My observation is that it is easier for the counsel of the railroad to get down before the committee than it is for the division superintendent.

Mr. LITTLEPAGE. The only thing I can say further, Mr. Chairman, is that if the committee cares to adjourn over until to-morrow, I can communicate in the meantime with Mr. Pierce and other gentlemen whom I know of who would care to appear. I do not mean to ask the committee for any indulgence, but if they care to adjourn over until to-morrow—



The CHAIRMAN. Senator, are you prepared to go ahead on any of the bills?

Mr. FAULKNER. No, sir; I do not think of it. There is only one bill, and that is set for Saturday. I will be ready then, and we will be ready on Friday on the 16-hour bill, Mr. Wanger's bill; and we will be ready on Saturday, as suggested by the chairman yesterday, on the claims bill.

The CHAIRMAN. When?

Mr. FAULKNER. Saturday, provided the other people do not take up the time on Saturday on the Townsend and Mann bills. Of course we will have to be subject to that order of the committee.

Mr. STAFFORD. I will suggest, Mr. Chairman, that the representative of the Rock Island—

Mr. FAULKNER. Here is Mr. Pierce now.

The CHAIRMAN. Mr. Pierce, are you ready?

Mr. E. B. PIERCE. Mr. Chairman, I think I owe somebody an apology this morning.

The CHAIRMAN. Do not waste any time on that.

Mr. PIERCE. I told Mr. Littlepage that I expected to be in Washington this morning, and I expected this bill would be on for consideration, and I told him that some time during the day I would perhaps want to make some few remarks on it. I did not suppose there was a set engagement made for me.

The CHAIRMAN. There was no set engagement made.

Mr. PIERCE. I do not care to appear this morning, because I have made no preparation. If the committee will meet to-morrow I will like to appear and be heard then. I have been busy with other things, and have not had time to prepare a statement such as I would like to make if I have anything to say.

The CHAIRMAN. Very well, then. Without objection the committee will adjourn until to-morrow morning.

(Thereupon, at 10.40 o'clock a. m., the committee adjourned until to-morrow morning at 10 o'clock.)

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES,  
*Washington, D. C., Thursday, February 10, 1910.*

The committee met this day at 10 o'clock a. m., Hon. Irving P. Wanger in the chair.

Mr. WANGER. The committee will be in order. Is anybody ready to proceed?

**STATEMENT OF MR. E. B. PIERCE, GENERAL SOLICITOR OF THE  
ROCK ISLAND AND PACIFIC RAILROAD COMPANY.**

Mr. PIERCE. Gentlemen, I would like to submit a few remarks.

Mr. WANGER. Very well. You can take your position at the end of the table. Give your name to the stenographer and the road you represent.

Mr. PIERCE. My name is E. B. Pierce. I am general solicitor of the Rock Island and Pacific Railroad Company, and my residence is Chicago.

I might say to the committee that the reason I am here before you this morning to make a few remarks on this bill, the Townsend bill—

Mr. WASHBURN. H. R. 17536.

Mr. BARTLETT. The Mann bill and the Townsend bill, that look as though they were trying to do the same thing, though dressed up a little different.

Mr. PIERCE. As a matter of fact, in the last two or three years our company has charged me with the duty of looking after its interstate-commerce litigation, and while I know very little about the subject, at the same time I have had perhaps as much experience as anybody in our law department, and for that reason our company has asked me to make an appearance before the committee.

I have looked through the Townsend bill, so called, and it is in connection with that bill that I would address my remarks. If the members of the committee desire to ask me any questions relating to other bills with which I am not so familiar, I will do my best to answer any questions that may be propounded.

The first six sections of the Townsend bill have to do with creation of a court of commerce. We are not opposed to a court of commerce. On the contrary, personally speaking, I am not particularly in favor of it. I think, however, that perhaps taking the arguments up one side and down the other, a commerce court is a good thing, and perhaps we ought to have a commerce court.

I want to say further in this connection that I am convinced, from the last three or four years' experience, that the interstate commerce law has been one of the most valuable laws upon our statute books. I think it has been one of the most necessary laws. I think that law should be given the most careful consideration with a view to strengthening it at proper places and making it a strong working document, having in view the interests both of the railroad companies and the shippers. I think that the bill is of great advantage to the railroad companies. I think, also, it is of great advantage to the shippers.

Mr. BARTLETT. You mean the present law?

Mr. PIERCE. Yes; the present law and any proper amendment to it; and at the proper time an in the proper way perhaps some amendment should be made to the law. I believe some such law is necessary to protect the railroads against each other. I believe it is necessary to protect the railroads against the shippers, and the shippers against the railroads, and to protect the shippers against each other. The interests are so great and the pressure is so great that I absolutely believe we will not see the time in this country when it will ever be possible to think about repealing some of the most drastic provisions of this law.

I merely state this so that the committee will understand that I am not one of those who are opposed to any legislation on interstate commerce. My experience convinces me that it is necessary, and I believe that the law has done great good, and that our whole aim should be toward a strengthening of that document and making it a workable instrument.

Now, it is for that reason that I think a court of commerce is a good tribunal to create. There are very few lawyers scattered around the country that know very much about the interstate-commerce law. I

am talking about the generality of lawyers. I have had occasion to come in contact with lawyers from New York to California and from the Lakes to the Gulf, because we have been parties to a great many cases in all parts of the United States, and the lawyers as a rule are not very familiar with the provisions of the act. Of course, when a lawyer gets a case he undertakes to inform himself as best he can. It is still more true with the generality of the courts. A great many of these questions are arising in the state courts. Sometimes we have got a question involved in some case before a justice of the peace court, and the conflict in the decisions is very great, and I should think there should be some court that should give special attention to these matters and become expert on the subject so as to get this document, as I say, to the condition of a consistent working document as near as we can. The intricacies of the commerce of this country are such that you can never hope to enact any statute that will meet all the questions that will arise from day to day. You study, and study, and study, and question after question is propounded to you, and yet every question has just a little different shape to it, and you can never, as I say, hope to pass any act that will meet all the questions that will arise in connection with carrying on the vast commerce of this country. Therefore, in order to have some consistent working document, it is going to be absolutely necessary to iron out some of the inconsistencies and some of the incongruities of any act or any law by judicial construction, and whether the construction is right or wrong, it is important that that construction should be uniform and authoritative for the guidance and action of the vast throng of traffic people and shippers in this country who do not know from time to time whether they are violating the law or whether they are not violating the law.

Now I think, therefore, that a court of commerce will go very far to accomplish this important purpose. I think that the court should sit in Washington and sit also in various parts of the United States as occasion may require. But I do doubt whether the constitution of the court as this bill provides for will accomplish the desired end. This bill provides that it shall be made up of the existing circuit judges, five of the existing circuit judges; that the terms of the judges of the court, as it is constituted, shall run from one to five years, and thereafter that the terms shall be each five years, one judge stepping down and out every year.

Now, I do not think that is a good plan. I think it defeats the very purpose that we have in view in attempting to create a court of commerce. This is a great subject, this interstate commerce. It is the most intricate subject that we have to deal with to-day. It involves more phases and more difficult situations—there is more detail to it, it takes a wider range—than any other question coming before the courts. You can in an ordinary replevin suit get from the books what the law of replevin is, or you can get from the books what the law of ejectment is. But the commerce of this country is built up in such a way that every part of the country is in a great measure dependent upon another part, and it is almost impossible for a man to pass upon any rate case, any important rate case involving rates, we will say, from one section of the country to another, without having knowledge of just how the rates are built up all over the country.

I assume that you have given the subject considerable attention, and I have no doubt that you have been astounded by the facts that you have found, showing that this whole rate structure is a relative one, and that our whole commerce has been built up on it, and that when you change one of these factors or change one rate, you immediately find ten thousand other rates in ten thousand other communities claiming the right to the same change, or to some change. So that when a man approaches the consideration of one of these interstate commerce cases, he does not find everything that he must know in the books. He does not find everything that he must know in the records, because if his decision is confined entirely to what he finds in the books and what he finds in the records, he will not be able to decide that case as it should be with reference to the entire interests of the country.

Therefore I say that for this court to be what we want it to be, and what it must be in order to be an effective court, it must be made up of experts, and that the term of office, the term of these judges, must be such as to warrant them in making, as it were, a life study of this subject.

Now, you appoint your first court of five judges. You bring a circuit judge from California, who is only going to remain in this court one year. He can not get a smattering of the subject in one year. He could not even get moved. The judge who serves for a two, three, four, or five year term will be in the same shape. I think it ought to be a life position, and I think the attractions ought to be such as to get the very best men you can get. You should make it a life tenure, and offer some inducements to make that profound study of the subject that they ought to make to have a court that will accomplish the purposes that ought to be accomplished, if we are going to have a commerce court at all. I do not think you can get it by this provision at all. I do not think you can get it. Besides that, I do not see that there is an inducement for a circuit judge to come to Washington for four or five years with the small increase of \$3,000 in his salary; and while in that period he can not make a good interstate commerce judge out of himself, yet during that period he is getting out of touch with his own circuit. It is necessary for our circuit judges to keep in close touch with the laws enacted in their own States, in the States comprising those circuits. It is necessary for them to keep acquainted with the current of events, and it is absolutely impossible for a man to do that if he is coming down to Washington for a period of five years. So that you have an illustration which in my opinion will very largely disqualify a man for service in his home circuit, and you are certain not to get the man who will have time, however hard he may work and however conscientious he may be, to become accomplished in the interstate lines of the country so as to give us just that kind of a court that we should have.

In addition to that you are constantly changing the personnel of the court. You are constantly changing, perhaps, the decisions of the court. There are two sides to almost all of these questions. I do not believe that you can get up a single question under the interstate-commerce act where plausible arguments can not be made on either side of it, and you have got to accept one side or the other. You have got to adopt one line of decision or the other. For that reason the

personnel of the court should be made permanent at once, and should be made up of men, as I say, who will have sufficient inducements offered to them to become that class of experts in this class of litigation that you can not get otherwise than by making the positions just the same of those of other circuit judges.

Mr. BARTLETT. May I interrupt there? Will it bother you?

Mr. PIERCE. No, sir; go ahead.

Mr. BARTLETT. This bill that you are discussing has four classes of cases in which exclusive jurisdiction is given.

Mr. PIERCE. Yes. I have looked at that.

Mr. BARTLETT. That is, for enforcement of penalty, cases brought to set aside orders of the Interstate Commerce Commission, and one in reference to the Elkins Act, and mandamus proceedings?

Mr. PIERCE. Yes.

Mr. BARTLETT. Now, what sort of technical knowledge of rates or anything of that sort would you require a lawyer to have in order to determine the cases that might arise under the exclusive jurisdiction given to the court by this act in those four instances? I thoroughly agree with you about the people you ought to have, that they should be experts, and I think you probably ought to appoint a judge for a longer time than one year; but I do not believe in a life tenure for judges or anybody else.

Mr. PIERCE. It says: "All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money." Now, the Interstate Commerce Commission have very large powers under the act. They have the power to prescribe all forms of tariffs. They have powers to prescribe your accounting rules. They have powers under the interstate-commerce act to do hundreds of things.

Mr. BARTLETT. When a case under that section reaches a judge in the court of commerce, it will have been thoroughly sifted out by the Interstate Commerce Commission and all the facts will be presented by both sides, will they not, if you are going to enforce an order?

Mr. PIERCE. That is entirely true, but if the purpose of this act is simply to get a court that will say that "the Interstate Commerce Commission has passed upon this thing, and we will not look into it," very little would be accomplished by it.

Mr. BARTLETT. That was not the purpose of my question.

Mr. PIERCE. But if you are going to have a court that will go into the consideration of all the questions they have considered in order to come to a conclusion, you will necessarily have to have experts. I dare say there are not ten lawyers in the United States—that may be a small number—but there are very few lawyers in the United States who know anything about the accounting rules of the railroads.

Mr. BARTLETT. Very few of railroad lawyers or anybody else?

Mr. PIERCE. Yes; very few railroad lawyers or anybody else. The Interstate Commerce Commission has Mr. H. C. Adams, an accounting expert, and it has been a lifelong study with him.

Mr. ADAMSON. If you build up a special court where there are five judges and a few lawyers who practice there, and they are the only ones expected to know this thing, you will encourage the idea that other lawyers need not know those subjects.

Mr. PIERCE. That may be, Judge; but what I do say is that these matters are of supreme importance, and everybody can not know them, and they have got to be dealt with by governmental authority, and consequently there must be both on the commission that is dealing with it and on the court that is dealing with it at least expert bodies.

Mr. ADAMSON. I suppose the experts in every business where they had a lawsuit would see to the presenting of all the facts in the suit so that every lawyer and the judge on the bench could understand the law.

Mr. PIERCE. That is true of an ordinary lawsuit, but you can not take one important rate suit or a case involving accounting rules or the tariff rules of the commission, all of which must be made with reference to other rules and with reference to the entire commerce of the country—you can not exhaust that subject in connection with any one case that you have under consideration. It is absolutely impossible, and I do not believe, if you are going to regulate these things by governmental authority, that you should undertake to do it except by expert bodies.

Now, if you are not going to do that; if you are not going to have an expert court, then we are going to a useless expense and to useless trouble in creating this court; because otherwise you might as well leave it to the present judicial machinery that we have already organized, and let them deal with it just as they do now. But if you are going to have one special court, let it be an expert court, and let it be organized along the line to accomplish the purpose you want to accomplish.

Mr. BARTLETT. What provisions would you add that are not contained in the Townsend bill?

Mr. PIERCE. I would add the qualification of life tenure.

Mr. BARTLETT. Yes; and you say we ought to have experts.

Mr. PIERCE. I think you have got to start out probably with men who do not know very much about the subject. I do not know whether or not you could constitute the court at first with experts, but—

Mr. BARTLETT. The point you are pressing is not so much that you should have experts to start with, but that you should select such men as may become experts and give them sufficient tenure so that they will eventually become experts?

Mr. PIERCE. Yes; so that they will work in to the proper qualifications.

Mr. BARTLETT. May I ask you another question?

Mr. PIERCE. Yes, sir; certainly.

Mr. BARTLETT. Some years ago, before the passage of the Hepburn Act, in March, 1906, or in 1904, a plan something like this for a commerce court was very much discussed and put forward by Judge Grosscup. Do you remember what he suggested? In fact, I think he drew a bill and presented it to a meeting of the Manufacturers' Association in 1904. Do you remember what his plan was?

Mr. PIERCE. No, sir; I do not. I remember that Judge Grosscup had a great deal to say about interstate commerce matters generally. He seems to have given the subject a great deal of thought, and at the time the Hepburn bill was up I recollect they had something up there known as the Grosscup plan. But that has been three or four years

ago, and just what the details were I do not remember; I have forgotten.

I think that is all I want to say on the question of the court, unless there is some other question that the committee wants to ask me about.

Now, section 7 of the Townsend bill provides for agreements between the carriers subject to this act, specifying the classifications of freight or rates. Undoubtedly this section was intended to authorize competing railroads to make agreements fixing rates.

Mr. BARTLETT. You mean to allow pooling?

Mr. PIERCE. No, sir.

Mr. ADAMSON. To change the name, merely. "Pooling" is not acceptable?

Mr. PIERCE. Oh, no. This is not pooling at all. This is authorizing railroads to make rates by agreement. The purpose of this section is all right. It ought to be enacted into law, because it is a great hardship upon the railroads and the commerce of the country to say that railroads shall be guilty of committing a crime every time they do things that are absolutely necessary to be done in order to carry on the business of this country. You can not carry it on unless you fix these rates more or less by agreement. I think this section as it is drawn does not mean exactly what it says, or does not say exactly what it means to say, and I think the provisions of it are extremely cumbersome.

Mr. ADAMSON. You think it will possibly permit them to cease competition, do you?

Mr. PIERCE. No, sir; I do not. I think the curse of the country to-day is the competition between the railroads.

Mr. ADAMSON. You do not deny that under that agreement they might agree to quit competing together?

Mr. PIERCE. No, sir; they will compete just as much after this bill is passed as they compete now, because there is not any denying the fact that you can not make the rates of this country without an arrangement of some sort, or an agreement. I take it that this bill is only intended to authorize or legalize just what is actually being done to-day.

Mr. ADAMSON. You do not think they compete much to-day?

Mr. PIERCE. Yes, sir. I think the competition to-day is outrageous. I think the competition to-day is so strong that it is destructive of the interests of the railroads and destructive of the commercial interests, and it certainly results in the greatest economic waste that you could possibly think of. I think the competition between the railroads to-day is so fierce that it is resulting in an economic waste to the shippers of this country which, if estimated and put down in dollars and cents, would startle the whole United States.

Mr. RUSSELL. Do you think the competition between the railroad companies affects injuriously the shipper?

Mr. PIERCE. Well, I will give you an illustration of that. If the railroad companies to-day were permitted or required to provide only those reasonable facilities that are necessary to carry on the commerce of this country, millions and millions of dollars would be saved. Now, to give you a concrete illustration: Between the city of Chicago and the city of St. Louis we have seven competing

lines, the Santa Fe, the Burlington, the Milwaukee, the Rock Island, the Santa Fe, the Alton, and the Great Western; seven important lines.

Mr. RUSSELL. You enumerated the Santa Fe twice.

Mr. PIERCE. Well, there are seven lines now. I may have overlooked one.

Mr. ADAMSON. I was going to ask why it was they competed. It seems that they "bunch their hits" when they are competing, and confine themselves to particular sections.

Mr. PIERCE. We have those seven roads between Chicago and St. Louis. If you will stand in the Union Depot at Kansas City any night about 6 o'clock you will see every one of those roads sending out a brilliantly-lighted passenger train, carrying a dining car and sleepers and chair car and day coaches, and so forth. Every fellow is trying to get the business.

Mr. ADAMSON. At that place?

Mr. PIERCE. Yes; at that place. There is not more than enough business probably to fill up two of those trains, and yet every fellow among them is getting all of it he can, and the chances are that each one of those trains is running with a third of a load.

Mr. ADAMSON. You can tell them when you get home that they can relieve that situation if they will by putting their energies into places where the competition is not so fierce.

Mr. PIERCE. That may be true; but the running of so many trains of that kind, resulting from competition in order to get a share of the business, results in a great economic waste on the part of the railroads, which, of course, falls eventually upon the public. Now, I say if the railroad companies were permitted to pool that business and fill two of those trains comfortably, which would be giving the public all the accommodations necessary, there you would have a great saving. You can do it all over this country. In the freight business it is the same way. You will find competition of that kind between railroads in all the great centers of this country, and I say if the railroad companies were given an opportunity to pool their business so as to shut off this waste and this excessive competition the public would get just as good service and we would save all this tremendous expense that results from this competition.

Mr. ADAMSON. Then you do believe that if this section were adopted it would permit them, by agreement, to cut off competition?

Mr. PIERCE. No, sir. Making rates by agreement and pooling are two different things. They have no relation to each other.

Mr. ADAMSON. One may mean more than the other?

Mr. PIERCE. "Pooling" means that these railroads that I have spoken of between Chicago and Kansas City would be permitted to get together and say, "We will provide two trains to carry these people from Chicago to Kansas City," say, for instance, over the Rock Island and the Burlington, and then apportion the income among the roads so as to save the expense to the public and to the railroads by not running these five other trains. That is what is meant by "pooling." What is meant by making rates by agreement is that these five railroads running between Chicago and Kansas City have necessarily got to have the same rates. You can not carry on the business unless they have.



Mr. ADAMSON. If it does not eliminate competition, and all run along the same without any more business, it would not make any more business if you did agree upon a rate.

Mr. PIERCE. There is just so much business, and every fellow is trying to get the business. Now, in order to eliminate the economic waste that I have spoken of, you can do that by pooling. But the purpose of this section now is to say to these railroads that, "In addition to allowing you to pool your earnings, we will also allow you to get together and agree upon what the rate shall be from Chicago to Kansas City."

Mr. ADAMSON. You mean, agree upon a common rate that will be profitable to everybody, whether you do more business or not?

Mr. PIERCE. Yes.

Mr. RUSSELL. Did I understand that you said, in reference to the seven competing lines between Chicago and Kansas City, that the probability was that a portion of that business was now being done at a loss?

Mr. PIERCE. No. I did not say it was being done at a loss.

Mr. RUSSELL. Then where does the economic waste come in, if the business is not done at a loss?

Mr. PIERCE. By the running of the five extra trains you might be getting a profit on that extra business, and you might get enough of a profit out of it to pay the actual expenses, but it necessarily follows that if you carry all the people who travel between those places in two passenger trains instead of seven you would be saving the running of five passenger trains daily a distance of 500 miles each way every year, and some of them two trains each. You are certainly expending a great deal of money for something that ought not to entail expenditure. The only way that can be remedied is by pooling.

Mr. RUSSELL. The moral of that is that if you are spending a lot of money that you ought not to spend you must recoup the loss in some other way?

Mr. PIERCE. Yes. You have got to get it. These railroads are organized as common carriers. They are authorized to run trains between Chicago and St. Louis and between Chicago and Kansas City, and the law requires them to run expeditious service, and the public does; and if each fellow does not run the very best train, he is out of the business, and if he does do it the public will suffer more than if he does not do it, whereas by pooling their earnings the companies would save a great deal of money to themselves and to the public.

Mr. RUSSELL. I do not think the public would care to see the companies incur an economic waste, but suppose you could save, as you say, the amount of money that is lost in that way. What assurance could we have that it would not find its way into increased dividends instead of lower freight rates?

Mr. PIERCE. You have an Interstate Commerce Commission which is authorized to investigate freight rates and hear complaints and reduce those rates. You have got all the governmental authority that you possibly can have to do that. You are provided against that. I think I have had more interstate-commerce cases than any other man in the United States in the last three years, since the passage of the Hepburn Act, since we have been trying these cases, and if I have ever seen a single case of any importance where the

single issue involved was an unreasonable rate, I do not remember it. It was a question of relation entirely. The rates in this country are not high; they are low. This continual talk about excessive rates and impositions upon the public is a fraud and a farce. It is not so. It may be true that in certain quarters certain rates discriminate, and it may be true that in certain places people have suffered just as much by a discrimination as they would suffer by an inherently unreasonable rate. But in this country to-day we have not got unreasonable rates, and you need not give yourselves any concern, in my opinion, that anybody in this country at any time in the future will ever be called upon to pay an inherently unreasonable rate.

Mr. RUSSELL. Your line runs into the Indian Territory, does it not—from Texas?

Mr. PIERCE. Yes, sir.

Mr. RUSSELL. Do you know what the rate is on coal from McAlester to Fort Worth?

Mr. PIERCE. Well, I have just had a case involving rates from the Hartford mines, and the McAlester mines, and the Henrietta mines, and the mines in Kansas, I believe; involving rates, in fact, from all of those mines to Texas and Louisiana. The differentials and the coal rates to-day from all those points to all Texas points are affected by an order of the Interstate Commerce Commission that can not be changed by the railroad companies by an advance within two years from the date of the order of the commission. Of course it was a very complicated and long case, involving hundreds of rates, and I could not carry the rates in my mind. I do not happen to remember the one you speak of, but whatever rate is in effect to-day from Oklahoma to Texas, or from the old Indian Territory, it is adjusted by this body, which was constituted by Congress to fix rates, and there are none that are put in by the railroad companies.

I will say that in that case there was a very heavy reduction made in some of our coal rates. In fact, they were reduced in some cases lower than we thought they ought to be, but they were put in just as ordered by the commission, and they are in to-day, and they can not be changed except by order of the commission. And whatever the rate is, it a government-made rate and not a railroad rate.

Mr. STAFFORD. What lines did you refer to in speaking a moment ago as to compelling the railroads to run expeditious passenger trains between Chicago and Kansas City?

Mr. PIERCE. I did not mean to be understood as saying that there was any federal law or any state law that required the Rock Island, for instance, to run an eight-hour train from St. Louis to Chicago. What I meant was that the law requires the railroad companies to give expeditious and reasonable service. Now, in the light of those conditions that are built up, that is almost as strong a mandate or direction as saying directly that you must run an eight-hour train, because it has been done so long and by other railroads that if we should undertake to show that a service longer than eight hours was a reasonable service, we could not get an affirmative verdict from a jury.

Mr. STAFFORD. There is no law to compel the Nickel Plate and West Shore to run an eight-hour train just because the Pennsylvania has an eight-hour limited, is there?

Mr. PIERCE. No, sir. Those are special trains.

Mr. STAFFORD. The speed is determined by the character of the road, and the Nickel Plate and the West Shore could not maintain the eight-hour trains because they have not the requisite facilities?

Mr. PIERCE. No. The Nickel Plate has not much passenger business. I suppose any one wanting to travel to Chicago would no more think of taking the Nickel Plate than he would of taking a boat line by way of Newfoundland. You do not hear of it often as a passenger road. The result is that as to passenger traffic it has substantially gone out of business. The only reason that the Nickel Plate is enabled to practically go out of business as a passenger road and not be considered in that category is that there are other roads that supply that service, and the Nickel Plate has enough freight business to make sufficient earnings to keep it going.

Mr. STAFFORD. Those second-class roads carry a certain traffic to New York—

Mr. PIERCE. Yes. They are differential roads that can not compete with the Pennsylvania or the New York Central, and for that reason they have a fare that is a little less than the others, and they are known as the differential lines.

Mr. STAFFORD. Who determines the 26-hour limit, and what was the occasion for it?

Mr. PIERCE. I am not connected with those eastern roads, and I do not know anything about it, except what I read in the papers and the time cards. Who determines it or how long a time it takes to do it, I do not know; but these things usually result from long warfare between railroads.

Mr. STAFFORD. That 26-hour limit has been in existence for a great number of years, and yet it has not been lowered even with the improvement of the locomotive traffic?

Mr. PIERCE. My personal knowledge of passenger conditions between Chicago and New York is limited to a comparatively recent time. These things antedate that time, so that I could not give you much personal information on the subject. But I do know in a general way that present schedules and present conditions have resulted from long and destructive wars in the past between these roads as to what the rates and time should be. For instance, one of these differential lines would say to the New York Central line, "We can not compete with you in time, so we are going to make a fare of \$10 less than you do. We will make up our handicap as to time by a reduction of rate." The New York Central will probably come back and say, "If you will make that reduction of rate, we will give the public not only an expedited service, but we will also give the same rate that you do." In the past destructive wars have resulted, and it is out of these wars that many of the present conditions as to standard time and schedules, and so forth, have come.

Mr. STAFFORD. Are there any differential lines in the territory west of Chicago? I remember the Chicago Great Western and the Wisconsin Central received some differential rates from competing roads, and I wondered if they are still in existence.

Mr. PIERCE. I am pretty sure there are no differential lines west of Chicago. I think they are all on the same basis, and that whatever rates are made by one are necessarily made by the others. Of course it is not necessary to a railroad that it shall make the same rates over

its lines as its competitor, but it is necessary for the protection of shippers.

Mr. STAFFORD. This policy of differentials as to passenger traffic has never been recognized in freight traffic except through pools?

Mr. PIERCE. Oh, yes. There are differential lines now in freight business, taking rail-and-lake routes east of Chicago, and taking water-and-rail routes east through the South Atlantic ports.

Mr. STAFFORD. I refer to all-rail lines.

Mr. PIERCE. No, sir. I do not think there are as to all-rail lines. There is no pooling at this time anywhere.

Mr. STAFFORD. I know that.

Mr. RICHARDSON. There is a subject not directly connected with what you have been discussing. I desire to get your idea of the latter part of section 9, as to that paragraph on page 17 which says, "Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge," etc.

Mr. PIERCE. If you will pardon me just a moment, I am coming over to that presently. I am on my way to that section, and I will take it up later. I would like to finish my discussion on section 7 at this time, before going to that.

Mr. RICHARDSON. Very well; I will call your attention to it later.

Mr. BARTLETT. May I ask you in relation to those seven trains you spoke of as going from Chicago to St. Louis, and the economic waste by reason of the fact that competition requires all seven to be run, whereas if they were able to make an agreement they would be able to save the expense of running some of the trains? You mean less than the seven trains?

Mr. PIERCE. Yes, sir.

Mr. BARTLETT. Probably four trains would carry all the passengers?

Mr. PIERCE. Yes, sir.

Mr. BARTLETT. And at least three of them would go out of business, so far as carrying that particular traffic is concerned?

Mr. PIERCE. Yes, sir.

Mr. BARTLETT. Would not that reduce the employment of laborers and engineers and brakemen and firemen, and everybody of that sort, and the economic waste would be not only in the material that it takes to run the trains, but the economic waste would also extend to the unnecessary employment of people to run seven trains when four would do?

Mr. PIERCE. Well, it requires fuel, and it requires oil, and so on. If the purpose of the law is to make it so as to require as many trains to be run as possible for each passenger and each ton of freight, I do not think the railroads would have any objection to it, provided they were given opportunity to earn rates which would enable them to defray these expenses.

Mr. BARTLETT. How would you determine which of the railroads would run the trains, so that there would not be more than three trains?

Mr. PIERCE. How would you determine?

Mr. BARTLETT. Yes. You say you would run three trains between Chicago and Kansas City or St. Louis instead of seven. How would you determine that?

Mr. PIERCE. Well, if you and I were going to sit down and buy or sell a piece of land, if you wanted to sell me a piece of land or a stock of goods, we would talk over the details of the transaction, and I would ask you to tell me what you thought of it, and I would tell you what I thought of it, and we would talk over the details, and that would be a matter of negotiation.

Mr. BARTLETT. And the railroads that did not run the trains would be entitled to participate in the earnings of those that did run?

Mr. PIERCE. Yes, sir.

Mr. STAFFORD. That is predicated on the idea that the railroad traffic is a monopoly and should be run with that in view.

Mr. PIERCE. There is no reason why you could not be allowed to pool earnings when you must operate under certain restrictions and regulations. It is not intended that there shall be no competition. Let me refer to this: You gentlemen just read the decisions of the court and the Interstate Commerce Commission. For instance, take the yellow-pine cases from your State, Judge Adamson, which were before the commission a few years ago, and from all the territory south of the Ohio River to points north, where every railroad in that territory was a party to the rate, and where they were brought before the Interstate Commerce Commission, and where, after the hearings, the Interstate Commerce Commission fixed the rate. In that case some lines showed that they were not making anything scarcely on that lumber traffic, while other lines showed that the business was probably profitable. That is, the records showed that it was probably profitable. You did not find the Interstate Commerce Commission sitting down in that case and saying to one line that it could get only 3 mills a mile per ton, and saying to another, "We will let you get 16 mills," and to another, "You can not charge but 14." When they came to fix the orders, they fixed a 14-cent rate for every route, regardless of the financial condition of the railroad hauling that traffic. The fact is, they could not have done otherwise.

I cite that to you because it is not the purpose of the law or the understanding of the Interstate Commerce Commission or anybody who knows anything about the working of the interstate-commerce law that there should be different rates, or can be, by competing routes, because if you did, you would not only put the competing roads out of business, but you would also put the shipping interests out of business.

Mr. ADAMSON. Suppose they agree upon a rate, or the commission fixes a rate common to all. Are there not other ways in which they can compete under those conditions? Let the seven railroads you speak of make rates profitable to all of them. Can they not, by means of special equipment and other attractions, induce people to give them traffic? Would not the competition be there, even after you had fixed the rate any way you please? Would not the competition be just as sharp?

Mr. PIERCE. Yes; that is what I was saying. Somebody asked the question about pooling, and I digressed a little and got off on the subject of pooling, which has no reference to this bill. I was simply giving you some ideas of my own, which, perhaps, may be treated by the committee as purely gratuitous and unnecessary. But this is a

general running discussion, and pooling has nothing to do with this section.

To come back now to my illustration. The law to-day does not permit the railroads running between Chicago and Kansas City, taking those as an illustration, to get together and say, for instance, that the passenger rate between those points shall be \$10.

Mr. ADAMSON. Yes; you set out with the idea, Mr. Pierce, that competition was destructive, and you wanted to eliminate the competition. I would allow you to change the name, and I would allow you to dismiss the word "pooling" from the dictionary, and allow you to fix a rate by lot or agreement or in any other way, in fact, to let those roads make a living after dividing the business; and yet after that will not competition still be destructive if they are permitted by different equipment and different inducements to attract trade?

Mr. PIERCE. The mere fact that we may be permitted under this bill to get together and say, "The rate shall be so much," will have no effect on competition. It will be just as strong as before. That is the point, is it not?

Mr. ADAMSON. Yes.

Mr. PIERCE. The competition will be just as strong. As I understand the purpose of this act, it is to permit the railroad companies to say what the rates shall be, but it can not have any effect upon competitive conditions, such as equipment, and the matter of time, and phonographs, and stenographers, and manicurists, and baths, and flowers, and everything they can put in a train to make it attractive.

Mr. RICHARDSON. How do you say this bill intends that the railroads shall fix the rate?

Mr. PIERCE. The bill says so.

Mr. RICHARDSON. Don't you know that this bill takes from the common carrier in effect the power to initiate a rate?

Mr. PIERCE. No, sir.

Mr. RICHARDSON. Are you not mistaken about that? Is it not true that no rate can be changed without the consent of the Interstate Commerce Commission before it goes into effect?

Mr. PIERCE. No, sir. The bill says in another place that upon the filing by the Interstate Commerce Commission of a rate, an increased rate, it may suspend that rate during a period of sixty days until they investigate and ascertain if the advance is reasonable. But the railroad by this bill is in no way deprived of the initiative in making rates.

Mr. RICHARDSON. I want to talk about that when you reach it. You said the bill did not prevent the common carriers from fixing the rate at any time. I do not agree with you about that.

Mr. PIERCE. This section 7 merely says that the railroad companies can get together and agree upon rates. It is not the substance of this section that I am quarreling with or that I propose to criticise. It is merely the form of it. I think that in all fairness to the railroads and in justice to the commerce of the country that ought to be permitted to be done which this section says can be done. But the objection I make is not to the substance, but merely along the line of helping to make this a working document, as I said in the opening of my speech.

It is provided in this section that—

Agreements between common carriers subject to this act specifying the classifications of freight and the rates, fares, and charges for transportation of passengers and freight which they agree to establish shall not be unlawful if a copy of such agreement is filed with the Interstate Commerce Commission within twenty days after it is made and before or when any schedule of any rate, fare, or charge, or any classification made pursuant to the agreement is filed with the commission; but all provisions of the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended, and all provisions of this act and any future amendments thereof shall apply to such agreed rates, fares, and charges, and such agreed classifications, and the Interstate Commerce Commission shall have like control over and power of action concerning any agreed rate, fare, charge, or classification, including suspension of the rate or classification before it becomes effective, and pending investigation of its propriety, as if the rate, fare, charge, or classification had been made without agreement, and any party to such agreement may cancel it as to all or any of the agreed rates, fares, charges, or classifications by thirty days' notice in writing to the other parties and to the Interstate Commerce Commission, and such agreement of carriers, though filed with the commission, shall not be deemed a tariff or schedule of rates, fares, or charges collectible from the public, or operate itself to alter any such tariff or schedule whensoever filed and published.

What this ought to say is, "Agreements between carriers." Railroads to-day who form connecting lines have a right to-day to fix by agreement those through rates. Indeed, it is made the duty of connecting lines forming through lines to fix through rates under the act, and if they do not do it they are violating a duty imposed upon them by the act; and this position ought to be relieved of any uncertainty. If the words "agreements between competing carriers" were inserted in the twenty-fourth line of page 12, so as to make it say just what it is intended to say, it would be well. Otherwise you are going to have some confusion, and you are going to impose upon the railroad companies a great deal of detail, and a burden with respect to through rates that they are now under obligations to put into effect, and which they ought not to be subjected to.

Now, another thing: This says "it shall not be unlawful if a copy of such agreement is filed with the Interstate Commerce Commission within twenty days after it is made." That is a burdensome, unnecessary, and foolish thing to require. They are required, before they can make these changes, under the act, to file their tariffs, showing just what their rates are, when they are going into effect, and all the terms and conditions surrounding them.

Now, some of these tariffs, as, for instance, the transcontinental tariff, or the southwestern tariff committee's tariff that is issued, are, some of them, as large as that book [indicating a large volume]. They are very complicated. What is the necessity of going to the almost superhuman task required by enacting that you have got to file with the commission a copy of your agreements?

The fact is there is no actual written agreement. The gentlemen will probably meet around the table and talk the matter over, and the traffic manager of one road will probably say that "the conditions between A and B are such that the traffic ought to be profitable under such and such rates and conditions." Another man looks on from the standpoint of his road and says, "I can not agree with you on that proposition," etc. But finally it is necessary for all of them to have the same rate under the same conditions, and it is a necessity that they reach a common conclusion. That conclusion is evidenced by the tariff filed.

What is the use of requiring this duplication, this work of supererogation, in filing with the Interstate Commerce Commission all these

agreements, when the railroads to-day and the Interstate Commerce Commission to-day are so burdened with the filing of documents and records that you can not find anything when you want it, and you are spending a great deal of money trying to find room in which to keep the records? It is a foolish thing, because these agreements can not be effective until you file the tariffs. If the railroads are authorized to make an agreement, and if they put the rates in and have the tariffs express the agreement just as fully and effectively as any other document that could be filed, where is the necessity of requiring the great burden to be imposed upon the railroad companies and the Interstate Commerce Commission of keeping superfluous documents? And I want to tell you gentlemen, in this connection, that one of the most serious things that surrounds the railroads of this country to-day is the keeping of records and getting enough employees to attend to the details of the thousand and one regulations that we have to comply with. In my humble opinion you can not to-day operate the railroads of this country in accordance with all the laws on the statute books at this time. If you should furnish every engineer with a lawyer and a library, and if you should furnish every conductor with a lawyer and a library, and if you should furnish every station agent with a lawyer and a library, you could not operate the railroads of this country to-day so as to conform to all the laws that are on the statute books, to save your life. You could not put the Interstate Commerce Committee, I suppose, in charge of any railroad and operate that railroad to-day in conformity with all the laws that are on the national and state statute books, to save your lives.

Mr. RICHARDSON. While you do not object to governmental supervision and control, I take it you do object to governmental interference with the operative workings or machinery of the road?

Mr. PIERCE. I am arguing for effective and sensible control. I am arguing, not against the substance, but the form, of this legislation proposed here. I am arguing in favor of simple machinery. We do not object to control. We need the control. We have got to have control. But you have got to have simple machinery. Now, when you read the report that was made to this committee last year by the Interstate Commerce Commission, where they tell you that within a certain period, I believe, 600,000 tariffs were filed with the Interstate Commerce Commission, so far from being able to tell the Congress of the United States what, if any, advances had been made in freight rates, they could not even tell you the changes that had been made in freight rates. Now, how impossible would it be for you to say to the railroad companies that every rate that is changed must be evidenced in addition to the tariffs filed with the commission by a written agreement setting forth that fact.

Mr. RICHARDSON. That is what I wanted to talk with you about when you reached that place. You said there are 600,000 tariffs filed, as the commission reported, in the offices of the Interstate Commerce Commission. In that connection I would like to ask you about the power that the Interstate Commerce Commission is given in this bill to suspend the rate before it goes into effect.

Mr. PIERCE. Yes; I am arguing for machinery. The substance of this section is right, and it ought to be adopted; but the machinery of it is cumbersome and burdensome, and it would do no good.

Mr. RUSSELL. Do you think there is a conflict between the clause "it shall not be unlawful if a copy of such agreement is filed with the



Interstate Commerce Commission within twenty days after it is made" and the balance of that clause?

Mr. PIERCE. Yes; between that and the clause "and before or when any schedule of any rate, fare, or charge, or any classification made pursuant to the agreement is filed with the commission."

Mr. RUSSELL. Is there any conflict between the two?

Mr. PIERCE. Oh, no. I am not arguing that there is a conflict. I say the machinery is cumbersome. For instance, the railroads will agree upon a transcontinental tariff carrying thousands and thousands of rates. You say that must be filed with the commission. You say those data must be filed, and then you say that in addition to that you must file your tariffs. If you could only go into the traffic bureaus, the traffic departments of some of these railroad companies, and could see how the tongues of these poor fellows simply hang down, and how they are simply worked to death, and how they can not get the room necessary to do this clerical work in, you gentlemen would agree with me on the wise policy I am suggesting of cutting down the cumbersome machinery and making things as simple as possible. I am arguing here for a working arrangement, for simplicity in the method of handling these things which do not in any way interfere with the purposes you have in mind. If we had to follow these agreements by filing tariffs on all these rates and showing all the conditions under which the rates are to be operated, and if these have got to be filed thirty days before the rate goes into effect, what is the use of having 600,000 different agreements on file with the Interstate Commerce Commission, when the commission could not take care of them, and if they did have them they would not be worth the paper they are written on because the commission could not find them?

Mr. RUSSELL. Would there be any way of finding out whether the rate was a great rate or not a great rate?

Mr. PIERCE. What difference would it make when the law says you can agree upon the rate? Whenever you find that the rates between seven different roads, running between the same points, are the same, you can be assured that those rates were put in by an agreement.

Mr. BARTLETT. It was a gentlemanly understanding?

Mr. PIERCE. I do not care what you call it. There is no use in beating the devil around the bush about it. This is a sensible provision, put in here to prevent a man from being accused and convicted as a criminal and taken to the penitentiary every time he does something that is necessary and indispensable in the running of the commerce of this country.

Mr. WASHBURN. Have you any amendment to suggest to section 7?

Mr. PIERCE. I think everything should be stricken out there except to say that:

Agreements between competing carriers under this act, specifying the classifications of freight and the rates, fares, and charges for transportation of passengers and freight which they agree to establish, shall not be unlawful.

I think that everything ought to go out after that. It is burdensome and cumbersome to the railroads and does not do anybody any good.

Mr. WASHBURN. You think that ought to come out?

Mr. PIERCE. Yes; it will certainly create more expense and trouble and confusion than anything that you could put there. Gentlemen, in its present form, this is an unworkable section.

Mr. TOWNSEND. That is, the proposition in this bill is to permit you gentlemen to do directly what you are already doing, unlawfully and indirectly. It permits you to get together and make an agreement as to rates, fares, and regulations?

Mr. PIERCE. Yes, sir.

Mr. TOWNSEND. Now, those agreements can be departed from at any time by any one of the carriers? He is not bound by it?

Mr. PIERCE. No, sir.

Mr. TOWNSEND. That is not a binding agreement, but any one can depart from it?

Mr. PIERCE. Yes, sir.

Mr. TOWNSEND. Now, you say if we allow you to get together and do this it would be to the interest of the public, and therefore that agreement ought to be filed. The platform of the party that I represent declared that it must first be approved by the commission before it can go into effect.

Mr. PIERCE. I am not arguing that the commission ought not to have full information or that the public is not entitled to full information about it, but I am arguing that after that agreement is made the law requires you to publish tariffs showing all the rates and routes and all the terms and conditions under which those rates and routes can be operated, and requiring them to be filed with the Interstate Commerce Commission and at all the stations thirty days before their going into effect. Now, have not the public and the commission got all the information concerning those tariffs that you could give by a possible publication of the agreement? Many of these things can not be reduced to the form of an agreement. It is almost impracticable to do it. The traffic men get out certain lists and tell the tariff clerks to check in those rates. If these rate agreements had to be put in the shape of formal agreements and filed with the Interstate Commerce Commission, I tell you frankly I do not believe it would be possible to do it. I think the task is a superhuman one, unless we could file the tariff itself as showing the agreement, and we are required to do that anyhow.

Mr. TOWNSEND. It does not seem to me that that should be a very difficult matter.

Mr. PIERCE. If there were but one tariff, Mr. Townsend, it would be all right. If I had but one dollar I would not be bothered about counting it, but if I had millions of dollars to count every day, and if in addition to that I had to serve the public and had to appear before state commissions all over the United States, and had to be getting up all sorts of data for the Interstate Commerce Commission, and had to be in court also as witness, and had to be attending to all the numerous demands of the shippers, and all that sort of thing, then it would simply be a physical impossibility for me to do it. If I did not have anything else to do, it would be a very simple matter, but we are getting this machinery so complicated and you are making so many useless requirements and imposing them on the railroads that honestly, I tell you, you are discouraging the rank and file of the clerks. I may say that I come in contact with them. I might say that I am one of them myself. I have been right down with "the boys," and I am talking with you now from the bottom of my heart, not against your regulating, but against the useless burdens that you are imposing upon the railroads.

And I want to say that if you do not get more simple machinery to enable us, who have to do this work, to do it, you are going to be responsible for a good many cases of nervous prostration, and a good many cases of men who are simply wearing their lives out in trying to observe useless detail. That is a fact. I am not giving you any fiction. I am not here talking as a lawyer, telling what somebody else has said, but in the last few years I have been down in the traffic department working these things out, and I know I have stayed in my office night after night, and night after night, trying to work out the form and machinery and the substance of those things that the national and state governments are requiring of us.

Now I ask you to make these things simple. If you compel us to go to great expense and publish these tariffs and publish them all over the country and all over our lines, telling you what the conditions are and the rates, and giving thirty days' notice of it, what is the use of burdening me, as the attorney of the Rock Island and Pacific Railroad Company, with the necessity of having to maintain in our department at great expense a force to duplicate the same information you require to be filed with the Interstate Commerce Commission, giving exactly the same information and nothing more, and requiring that we must follow that up in a published filing of agreements a few days later?

Mr. TOWNSEND. Now, Mr. Pierce, these agreements that you enter into now, these agreements that you have with the other carriers, are not complicated, or not so complicated but that each man goes home and puts these agreements in force. Is not that so?

Mr. PIERCE. No, sir; they are complicated. It can not be done. They have got to be checked out by the rate clerks.

Mr. TOWNSEND. What do you check it by?

Mr. PIERCE. For instance, to give you an illustration of it, we have just been engaged in litigation over the actual rates from points in Iowa to Chicago, and before you can ever put in those rates, where you have got lines crossing and running north and south and east and west and northeast and southwest and northwest and southeast, you must recognize the fact that there is great competition, and you have to put in what you call your "cross-country checks." You must check them out in connection with another point, so as not to discriminate or put another point out of line. Every rate is put in as far as possible, but of course since the human mind is fallible and human effort is limited, we do have mistakes and incongruities and absurdities of tariffs. But you have a thousand and one things like that to guard against, and when we say that the rates from the Missouri River to Chicago shall be 23 cents a hundred, and I said that means it can not be put in, on account of the great number of lines or the great number of communities, without being checked carefully and graded down toward Chicago, without this expert check—if you want any information on that ask Mr. Prouty, because he has been putting the experts at work to tell me whether it is practicable to put in a scheme of rates that he himself suggested on account of the "cross-country checks."

Mr. TOWNSEND. When you and half a dozen railroad men get together and talk over rates and agreements and each fellow says, "I will do this, and you will do that," practically when you get back to about the same thing, what do you agree upon? Is it an abstract agreement that you enter into?

Mr. PIERCE. There is nothing but the tariff that shows it. There is not any formal agreement. But if you require that this thing be reduced to writing and that it be filed with the Interstate Commerce Commission or any other body, you would really have to create a separate department in every railroad for the purpose of getting up these agreements. It would require such a separate department in the Rock Island Railroad, where we have 8,000 miles, and where rates are reduced as well as advanced, you will understand, and reductions fall within this law as well as advances. There are thousands of changes being made, and I tell you it is not practicable to reduce to the form of an agreement every day all the rate changes that would be made.

Mr. TOWNSEND. You do not have these agreements every day, do you?

Mr. PIERCE. I suppose there are rate changes made every day.

Mr. TOWNSEND. I am talking about agreements. The rate changes are provided for elsewhere or under existing law. I am talking about the agreements.

Mr. PIERCE. They are made every day. I do not suppose the Rock Island is any more able to keep up with the rates than other roads. The Rock Island is in trans-Missouri territory, and it is in southwestern territory and in Louisiana territory and in transcontinental territory, and we can not keep a sufficient force of men to keep up with the rates in all these territories. It is so vast that you probably have not any conception of it, and sometimes it takes the entire force in the traffic department, every one of them, days and days, when they are absolutely compelled to sit down at their tables and work continuously on these changes, and they have no time to give to the public, and no time to devote to any other business, and you can not work it out in any other way.

Mr. RICHARDSON. Does not the Interstate Commerce Commission, even after you make the agreement you are contending for, have the power to supervise it?

Mr. PIERCE. Certainly.

Mr. RICHARDSON. And has it not the power to suspend it?

Mr. PIERCE. Yes, sir; but that is not what I am arguing about. I am contending principally for simple machinery. If this provision will do any good, if it will accomplish any worthy purpose, I would have no objection. But I can not see a single useful purpose that it will subserve.

Mr. TOWNSEND. When the framers of this law put in that particular provision, did they not intend that? Why did they do that?

Mr. PIERCE. I think it was a very foolish thing, just as would be the passage of an act such as: "*Resolved*, That the Mississippi River shall run from New Orleans to St. Paul," instead of running from St. Paul down to New Orleans; because you could just as well have done that as to attempt to prevent by legislation some of these rates being made by agreement, if you choose to call it that. I do not think it is a violation of the law to-day as it is written, but even if you put it as strong as you wish you can not change the actual conditions under which this business has got to be carried on, any act of Congress to the contrary; and if you get an enactment which is contrary to the essential facts of a case, or contrary to what is necessary to be done, that act or enactment necessarily becomes a dead letter on the

statute book; and that is the reason why this committee and Mr. Roosevelt and Mr. Taft and everybody else that has looked into this subject has been in favor of relieving the railroads of the country from the operation of the antitrust law since the decision in the trans-Missouri case was rendered.

Mr. ADAMSON. You might as well reply that all laws directed against crime and immorality should be repealed because crimes and acts of immorality are committed anyway.

Mr. PIERCE. Yes; but here are the things that you are requiring the railroads to carry on: You are requiring the railroads to carry on the commerce of this country, and you are requiring the railroads not to discriminate, and you are requiring the railroads to make reasonable rates, and you are requiring the railroads to make through rates, and you are requiring them to do all these various things which can not be done unless you violate the spirit, at least, of the law, which provides that you can not consult with your competitor about things that are necessary.

Mr. ADAMSON. That is a humiliating defeat for the Government if a law has been passed that can not be enforced.

Mr. PIERCE. I do not think, Mr. Adamson, that you understand my argument, when you spoke of repealing the laws against crime and immorality because acts of crime and immorality are committed notwithstanding the laws. Of course that ought not to be done, because the Government does not require a man to commit a crime. But you do require the railroads to do certain things, and often certain things are only to be done in certain ways in order to do what is required to be done in the way it is required to be done.

Mr. ADAMSON. We undertake to require that the railroads should be run in the way that commended itself to the lawmakers and the needs of the people, and if we are forced to acknowledge that that law is broken because you do not see fit to observe it, that is a humiliating situation.

Mr. PIERCE. I do not want this committee to understand that I concede that we are violating the Sherman law, although, as I have said, it is against good common sense. I think our people are doing a lawful thing under the law as it exists to-day. But there is a constant impression abroad that the railroads are violating the law by making these agreements, and inasmuch as it is recognized that you can not make reasonable rates and you can not prevent discrimination and you can not carry on the commerce of the country without more or less of negotiation and conference between these various competing lines, which may be said to be an agreement, then you are doing the wise and proper thing to propose to change that construction of the law which says that if rates are made by agreement they shall be unlawful.

Mr. RUSSELL. Do these conferences occur at any particular time? Do you give notice to each other of their occurrence?

Mr. PIERCE. I do not believe I attend all of these meetings, but I attend them frequently. Please do not understand that they are secret societies, where you have to tap on the door and give a secret password, or anything of that kind. The shippers are constantly before the committees and request conferences with them. For instance, the Western Trunk Line Committee has a big office in Chicago, and Mr. W. H. Hosmer is the chairman of it. A subject comes up, a

question of a change of some rate, and if a railroad wants to make a change, they do as anybody else does who has got to help carry on this business, and they will say to the other railroads, "We have got in contemplation the making of a certain change." It is absolutely necessary that the other roads should know about it, because otherwise you may create discriminations or throw the entire thing out of line. You have got to protect the shippers as you go along this thing, as well as the railroad, and you have to keep them on a parity; so that, if for no other reason, it is necessary for every road to know what changes are to be made, just as you require a thirty days' notice of all changes to be made, so that conditions can be adjusted and readjusted to meet those changes.

Those gentlemen will get around the table just as you gentlemen are gathered around this table here, and Mr. Hosmer will say, "Gentlemen, such and such a subject is up for discussion to-day," and one man will get up and give his reasons, just as I am doing now, and a gentleman sitting over there, as it were, just where Mr. Townsend is sitting, will get up and spat him with questions, just as Mr. Townsend has been doing to me [laughter], and it will be a kind of conference. It is not really an agreement, as such. If I tell them I am going to put in a rate of 15 cents a hundred pounds on packing-house products from St. Louis or Kansas City to some particular point, they must meet it.

Mr. RUSSELL. Do these meetings occur at stated times, at stated intervals?

Mr. PIERCE. As a matter of courtesy they usually give a certain notice, so that if any other railroad wants to meet the competition, it can.

Mr. TOWNSEND. How many meetings do you have of representatives of the trunk lines in a year?

Mr. PIERCE. I suppose they are meeting all the time. If you take the commodities list and sit down and go over it, and take the price list, you will notice that we have Memphis against Little Rock, and Little Rock against Memphis, and Wichita, Kans., against Kansas City, and Kansas City against Wichita, Kans., and Kansas City against St. Louis; and we have those things all the time, and absolutely we require two or three assemblies in constant session to keep up with them.

Mr. TOWNSEND. You do not have them, then.

Mr. PIERCE. Do not have what?

Mr. TOWNSEND. These constant sessions.

Mr. PIERCE. We have them constantly, practically.

Mr. TOWNSEND. Who is present at these meetings? More than one road?

Mr. PIERCE. Yes.

Mr. MILLER. Representatives of all of them?

Mr. PIERCE. Yes; representatives of all of them. If it is a legal question that we are discussing, a rate involving a legal question, probably I will be there, with the general freight agent of the Rock Island, or some other traffic officer.

Mr. RICHARDSON. You say that at these incidental interviews and conferences with and among the railroad authorities, rates are constantly changed, without formality, in the form of a written agreement?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. That is what I do not understand. You say that 600,000 rates are filed by the Interstate Commerce Commission?

Mr. PIERCE. Yes.

Mr. RICHARDSON. And yet this bill puts into the hands of the Interstate Commerce Commission the power of requiring—

Mr. PIERCE. The power to suspend those rates.

Mr. RICHARDSON. No; wait until I get through, please. This bill puts it into the power of the Interstate Commerce Commission to suspend any new rate that is made at any time after thirty days' notice from the railroad that it proposes to make the change? This rate can be suspended for sixty days after the time the railroad proposed to put it into effect?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. And yet you think that is leaving to the railroads the right to initiate the rate? That is what you said.

Mr. PIERCE. It is a very limited initiation.

Mr. RICHARDSON. Is it not a fact that the railroad under existing law has the authority to initiate rates subject to complaint by shipper or other parties? But by this bill, if it becomes a law, the carrier can not initiate a rate until it is submitted for approval to the Interstate Commerce Commission. Do you think under such provisions that is allowing the carrier the initiative power?

Mr. PIERCE. That may be said that way. I would not take any issue with you on that statement of the case.

Mr. RICHARDSON. Then the Interstate Commerce Commission under this bill has the right to suspend any rate that the railroads may see proper to devise or ask to put into effect?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. And it has the right to supervise it and hold it up really for ninety days?

Mr. PIERCE. Yes; and within sixty days' time it can issue a permanent order to last for two years.

Mr. RICHARDSON. And those rates are changed every day, over 600,000 being annually filed in the offices of the commission?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. Would not that be an endless and impracticable job for the Interstate Commerce Commission to pass upon that many rates, changing daily and hourly?

Mr. PIERCE. Yes. I do not think they can do it. I think it is an impracticable task, and that is another reason why I say you should give the Interstate Commerce Commission simple machinery, as well as the railroads.

Mr. RICHARDSON. Is it not a fact that giving the Interstate Commerce Commission the power to suspend a rate before the rate goes into effect will prevent the railroads from rendering a great many accommodations to the public that they are now freely rendering? Will it not tend to make the rates rigid and immovable?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. They are not going, for instance, to change a rate to accommodate a crowd, and they are not going to lower the rate temporarily for a charitable purpose? If they change they expect to restore that rate when the special accommodation ceases to exist?

Mr. PIERCE. No, sir.

Mr. TOWNSEND. They are not very busy in the lowering of rates, are they?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. And they have to take the chances of submitting that law to the Interstate Commerce Commission and everything of that kind suggested by that suspending provision?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. And therefore they will never change it?

Mr. PIERCE. There will be more or less changes that will have to be made, but the effect of giving the commission practically the power to initiate the rate, as stated by you, will undoubtedly have an effect of making the rates rigid and preventing the roads changing them except in cases of absolute necessity.

Mr. RICHARDSON. That will be comparatively rare?

Mr. PIERCE. There will be plenty of that.

Mr. RICHARDSON. Under the present law the railroads frequently make those changes in the interest and for the accommodation of the public?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. In certain events and emergencies that occur in the affairs of life, when the railroads will say "Everybody can pass up and down our railroads to-morrow at certain rates"—that never could be done under this rule?

Mr. PIERCE. It would certainly check it very much.

Mr. KENNEDY. It never ought to be done under any condition.

Mr. RICHARDSON. You know it would break it up?

Mr. PIERCE. Yes, sir.

Mr. KNOWLAND. We had a certain rate on lemons, a certain price, and we worked hard to get the price raised, and when we got it raised a cent the railroads raised the rate one cent. [Laughter.]

Mr. ADAMSON. In my friend's instance, there, there was a case where there was a compensatory duty allowed. [Laughter.]

Mr. RUSSELL. Coming back to the matter that we were discussing a moment ago, is it customary for the roads, after they have given notice to the other transportation companies that are going to attend the conference or negotiation, or is it necessary that the negotiation shall be confined to a particular subject about which the notice was given, or when you get in there do you discuss other matters or come to other conclusions on matters not contained or mentioned in the notice?

Mr. PIERCE. So far as I have seen the workings of these committees and the working of this committee here, they look to me very much alike. They just get around the table and have a general discussion. You gentlemen, after hearing all these arguments, get together and come to a conclusion. In our conferences that is the way we do.

Mr. RICHARDSON. Don't we talk to each other afterwards outside?

Mr. PIERCE. Yes; you talk to each other outside. [Laughter.]

Mr. RUSSELL. Would there be any objection to filing with the Interstate Commerce Commission a schedule or docket of matters that you intended to discuss and agree upon if this bill becomes a law—file with the Interstate Commerce Commission such a schedule prior to the meeting?

Mr. PIERCE. I do not think so. There is nothing secret about these meetings. The only reason why I could think they would want to be secret is that whenever a railroad says anything about advancing



a rate, the big shipper who hears about that will punish or attempt to punish that railroad by taking his tonnage away from it, and therefore the shippers use that as a club to keep down rates. It would be an advantage for that reason to have it kept secret as to who proposed that advance in rates.

Mr. RUSSELL. It has been advanced in the hearing here that sometimes the shipper meets with an injury by some conclusion that was arrived at after the notice was sent out and the conference began. If he could file a schedule with the Interstate Commerce Commission, that might meet that objection on the part of the shipping public?

Mr. PIERCE. If you said they could not have a meeting or discuss a matter or make a change until after they had filed a notice with the Interstate Commerce Commission, you would have then even more complicated machinery than you have here. It would not be workable here.

Mr. ADAMSON. When you mention the analogy between your proceedings and those of our committee, I take it as a compliment, an admission that you cleared or acquitted this committee of the charge of conspiracy for having agreed upon anything. [Laughter.]

Mr. RICHARDSON. The spirit of all this remedial railroad legislation, as I understand it, was first to correct abuses in the unreasonable charges of the railroads upon the public, in discriminations and rebates and things of that character, and that has been accomplished, and there is a wonderful improvement. Rebates and discriminations have practically disappeared in matters of transportation.

Mr. PIERCE. Yes, sir. I do not think there is any rebating now.

Mr. RICHARDSON. And now under the Hepburn bill, when a rate is complained of, the commission passes upon it fully and thoroughly, and says whether it is reasonable or unreasonable?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. Now, is it not a fact that, after these things had been accomplished in railroad legislation, every effort on the part of the Government to interfere with the internal management, machinery, and the operation of the railroads is against the interests of the railroads and of the public?

Mr. PIERCE. Yes, sir; it is against the interests of the railroads and of the public.

Mr. RICHARDSON. You are not opposed to governmental supervision and regulation?

Mr. PIERCE. No, sir; I think it is absolutely necessary.

Mr. RICHARDSON. But when the Government goes into something more than mere regulation and control, and goes into the details of the operation and management of the road—that you do not want?

Mr. PIERCE. I think it is absolutely unwise.

Mr. RICHARDSON. And that it is an injury to the public?

Mr. PIERCE. Yes, sir; I think it is. That is illustrated by the next provision in the same section, that I was going to call your attention to.

Mr. TOWNSEND. In that connection I wanted to ask you one or two questions. You do not have any difficulty in understanding what they are trying to get at in these meetings? You have in mind what things you discussed in those meetings and you know what you finally concluded upon them?

Mr. PIERCE. Yes, sir.

Mr. TOWNSEND. Is it going to put you to a great deal of trouble to tell about that? Have you a secretary or reporter to take down what is done?

Mr. PIERCE. These things are all evidenced by the tariff as it is worked out. It is not put down in any other form than as the tariff is worked out and printed. That is the only evidence that I know of, of the agreement.

Mr. TOWNSEND. The traffic manager of the Rock Island Railroad when he leaves that meeting, knows what has been agreed upon right there?

Mr. PIERCE. Yes; he knows what has been agreed upon.

Mr. TOWNSEND. He knows what the object of that meeting was?

Mr. PIERCE. Yes.

Mr. TOWNSEND. There is nothing about that that you regard as unlawful or detrimental to the shipping public?

Mr. PIERCE. No, sir.

Mr. TOWNSEND. Then it ought not to take, it seems to me, a great while to report that agreement, which you all understand, and understand without any difficulty at all; the object being, as of course you understand, to prevent the collusion of railroad managers on any matter detrimental to the rights and interests of the people. You say that it is not detrimental?

Mr. PIERCE. This would not prevent that. If you had a provision in here to say that these agreements could not go into effect except under certain conditions named in this section, then there would be something to the point you are making. But you legalize the agreement now. Whether made by collusion or not, or whatever the effect is, there is nothing there to keep the agreement from being made, and the agreement is being made lawful until the rates or practices agreed upon at that meeting are held up by the commission.

Mr. TOWNSEND. But this is for the express purpose of allowing the railroads the widest possible latitude, for which Judge Richardson was contending there?

Mr. PIERCE. Yes, sir.

Mr. TOWNSEND. Now we say that those agreements should be made public, since publicity is the best protection that the public has. We say that they should be made public before they go into operation.

Mr. PIERCE. Well, there are thirty days before they go into effect. When you file the tariff, that tariff contains absolutely more in detail the result of that conference than any agreement that has been made could possibly show. The public had thirty days' notice of it, and the commission by initiative or on complaint can suspend that rate.

Mr. TOWNSEND. When we are trying to find the method you gentlemen employ in constructing tariffs and making agreements as to rates and other regulations, we say and, we think, properly, that if we are going to regulate at all we ought to be posted, and the commission ought to be posted as to what agreements you have entered into. That is the whole object here. We are taking you at your word that they are all proper. We say it shall be legal, then; that it shall be proper that you shall get together.

Mr. PIERCE. I am not arguing against giving any information that the commission ought to have, or doing all the work that is necessary.

I think you ought to have and the commission ought to have all information needful. I think there should be provision made so that these things can be made public. Now, if I am wrong in my conclusion, based upon my experience as to how these things are done and the amount of work it would take to comply with this provision—if I am wrong in my estimate of the great burden that would be placed by this enactment upon the railroads and the commission in complying with this as compared with the benefits to be derived from it—then I waive the argument.

Mr. RICHARDSON. This bill really makes the agreement lawful?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. And then it follows it down the line and proceeds to encumber it with so much machinery and difficulty that it destroys the good effects?

Mr. PIERCE. Yes, sir. That is the argument I make.

Mr. RICHARDSON. I understand. When you speak of filing rates do you speak of filing them with the Interstate Commerce Commission?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. How often is that process gone through with, ordinarily, by a railroad in the course of twelve months?

Mr. PIERCE. It is so frequent that I could not give you an estimate. We have a tariff department up there, and we run our printing presses night and day.

Mr. RICHARDSON. After you once file it with the Interstate Commerce Commission the common carrier can not run on a lower or higher rate than that put in, unless he gives a notice of thirty days, and the commission has the right to hold it up sixty days longer? Is that correct?

Mr. PIERCE. Yes; so that you have got all that you can possibly give to the public by these provisions.

Mr. RICHARDSON. The public is fully protected and notified?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. And the burdensome part of it is unnecessary, so far as the public is concerned?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. It is simply loading down the railroads with something that is of no benefit to the public?

Mr. PIERCE. Yes, sir. That is what I am arguing. It is a serious question with us.

Mr. BARTLETT. You refer to the continuous and constant sittings of these gentlemen who represent the railroads for the purpose of devising rates and rules and regulations. You might call that a continuous convention for the purpose of inventing some means of getting around the hardships of the law, could you not?

Mr. PIERCE. No, sir. It is not necessary to get around the hardships of the law. It is done for a very simple purpose. The legislation of this country as to railroads could not be any better illustrated than by referring to Congress as a means of legislating for the benefit of the country.

Mr. WANGER. Would it be convenient for you to suspend now until 2 o'clock this afternoon?

Mr. PIERCE. Yes, sir. I have already taken longer than I intended. There are two or three more things I would like to say, and in addi-

tion to that we have another representative, Mr. Walker, who would like to make a statement.

Mr. WANGER. Very well.

(Thereupon, at 11.45 o'clock a. m., the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee met pursuant to the taking of recess at 2 o'clock p. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. You may proceed.

STATEMENT OF E. B. PIERCE—Continued.

Mr. PIERCE. When the committee adjourned at noon we were talking about the provisions of section 7 of the Townsend bill, and there was just one other thought that I wanted to offer before I conclude on that proposition. I want to restrict very much my remarks this afternoon so as to conclude at least by or before 15 minutes to 3, because Mr. Walker, the chairman of our executive committee, is here and desires to make some statements with respect to the financial features of this bill. So I will cut my remarks short in order to let him have the floor.

I direct your attention now to line 17, page 13:

And any party to such agreement may cancel it as to all or any of the agreed rates, fares, charges, or classifications, by thirty days' notice in writing to the other parties and to the Interstate Commerce Commission, and such agreement of carriers, though filed with the commission, shall not be deemed a tariff or schedule of rates, fares, or charges collectible from the public, or operate itself to alter any such tariff or schedule whensoever filed and published.

The way that is written it would probably conflict with certain provisions in section 6 of the act which authorizes changes to be made in rates upon less than thirty days' notice. In the making of schedules and the putting into effect of rates, very serious conditions arise sometimes, and it is very necessary that the commission should be invested with power to permit changes upon less than thirty days' notice.

If this bill is passed in its present form, it probably means, or could be construed to mean, that when one of these rates is fixed by agreement it would have to remain in effect for at least thirty days. It is not very clear as to just how it would work out, but it would have to remain in effect thirty days. Contingencies may arise, important contingencies, and power should not be taken away from the commission to permit the change of an agreed rate any more than the power should be taken from it to change any other rate.

Mr. TOWNSEND. That thirty days' notice refers, as I understand it and have understood it, to the right of a party—one of the railroads—to the agreement to withdraw from that agreement?

Mr. PIERCE. Yes; but then it says:

And any party to such agreement may cancel it as to all or any of the agreed rates, fares, charges, or classifications by thirty days' notice in writing.

Now, this certainly does not contemplate the changing of that rate by the filing of a supplement to the tariff, because if it does it con-

flicts with all of the rules of the commission as to how supplements shall be filed.

Mr. TOWNSEND. This agreement is not intended to affect any existing rate. If the language is not proper, it should be corrected; but it is not intended that the agreement shall affect any existing rate or in itself stand as a legal rate to be published.

Mr. PIERCE. This means to say, as I understand it, that where railroads agree upon rates, as they are authorized to do under this section, that that agreement shall be binding for at least thirty days.

Mr. TOWNSEND. So far as the carriers among themselves are concerned.

Mr. PIERCE. So far as the carriers among themselves are concerned, and it will not be permissible for any carrier who, for any reason, decides to withdraw from that agreement, to do so except by giving the thirty days' notice. That is the way it reads to me. That seems to me to be the plain intendment of the language.

Mr. TOWNSEND. Yes.

Mr. PIERCE. Suppose the carriers do make these rates by agreement, and file tariffs, as provided by law and in accordance with the rules of the commission, and those rates go into effect, say, for two days. Some condition may arise or some contingency may arise where it is found those rates are actually working a discrimination. Some contingency may arise where they ought to be changed immediately, but if under the language of the act the parties can not change those rates except after giving thirty days' notice, it means that they have to remain in effect for thirty days.

Mr. TOWNSEND. Do you think that would prevent the changing of the rate under permission of the commission in extraordinary cases, when this does not fix a rate? This, as I understand it, is simply an agreement among the carriers as to fixing rates in the future, or something like that.

Mr. PIERCE. If it does not mean what I have stated it means, that the other party to the agreement is entitled to thirty days' notice of a withdrawal from that committee, why then the point I am trying to make is not well taken, and there is nothing in it. But I am merely, as I stated this morning, trying in a proper way to help the committee as far as I can to get a working document.

Mr. TOWNSEND. Would you prefer that no notice should be given at all; that a carrier can draw out of that agreement any time he sees fit?

Mr. PIERCE. Yes, sir; in the manner now provided by law. You can not cancel any rate now except by thirty days' notice, but the commission has power upon proper showing and for sufficient reasons to permit us to cancel a tariff upon three days' or one day's notice. If you will examine the records of the commission, I think you will find that is being done every day in a great many cases, because many reasons exist why it should be done and the commission finds it necessary to do it.

The CHAIRMAN. Supposing two railroads have entered into an agreement at some meeting point in accordance with this provision; is there any obligation on the Government to enforce the agreement?

Mr. PIERCE. No, sir; there is no obligation on the part of the Government to enforce the agreement; but when the carriers have agreed and when the carriers have filed their tariffs, as they must do

in order to put into effect this agreed rate, then this act says, in section 6, that you can not change that rate except upon thirty days' notice by a published tariff in accordance with the act and under the rules of the commission.

The CHAIRMAN. There is nothing in the act.

Mr. PIERCE. Yes, sir; in section 6.

The CHAIRMAN. I am trying to get what your assumption is, to find out whether you claim that is the case.

Mr. PIERCE. I am not making any assumptions. I am stating section 6 of the act.

The CHAIRMAN. Let me ask you a question and we will find out. Supposing the two carriers have made the agreement, the Government being under no obligation to enforce it; can not either one of the carriers break the agreement any time, so far as the Government is concerned?

Mr. PIERCE. They can break the agreement after giving thirty days' notice.

The CHAIRMAN. No; can they not break the agreement before? They cancel the agreement after giving thirty days' notice?

Mr. PIERCE. No, sir; they can not break it before thirty days.

The CHAIRMAN. Why not?

Mr. PIERCE. You could not break it even if this provision in this amendment was not in the act, because before you can break the agreement you have got to withdraw those rates in accordance with the law. No carrier can nonconcur or withdraw from a tariff, even on a joint through rate, except upon thirty days' notice filed with the Interstate Commerce Commission.

The CHAIRMAN. Except by authority of the commission.

Mr. PIERCE. Except by authority of the commission.

The CHAIRMAN. Take the exact case; let us confine ourselves to a concrete case. Here are two railroad companies that have made the agreement.

Mr. PIERCE. Yes, sir.

The CHAIRMAN. To-day. Can not either one of them to-morrow, without regard to the agreement at all, file new tariff sheets with the commission?

Mr. PIERCE. Yes, sir; but what I am arguing is that the probable effect of this language is to deprive the commission of the power to permit the carriers, after the rate has become effective, to cancel that agreed rate except after thirty days.

The CHAIRMAN. It seems to me what you are arguing is that the Government is under obligation to enforce the agreement. The proposition is, as I understand it, to permit the carriers to enter into an agreement.

Mr. PIERCE. Yes, sir.

The CHAIRMAN. With such penalties, I suppose, as they may agree upon among themselves in regard to breaking it?

Mr. PIERCE. Yes, sir.

The CHAIRMAN. But either carrier, as far as the Government is concerned, may break the agreement any time. They can cancel the agreement, under the law, by giving thirty days' notice.

Mr. PIERCE. Yes, sir; but I say the effect of this provision here is to prevent the Interstate Commerce Commission from giving its sanction to the breaking of that agreement in less than thirty days,

although as to the other rates they can permit them to be canceled on three days' notice or one day's notice; and if certain contingencies arise a great hardship will be worked both upon the railroads and the public if that power is taken away from the commission. If this language is susceptible of the construction that agreed rates can be canceled just as quickly as joint through rates can be put in now by carriers, then, as I say, there is nothing in my argument.

But I have read this provision very carefully, and if I understand the English language, I do not believe that the power will remain in the commission to permit the effectual canceling of agreed rates in less than thirty days.

The CHAIRMAN. Do you think that two carriers or more could make an agreement under this provision with penalties in it against breaking it?

Mr. PIERCE. You mean the penalties as against each other?

The CHAIRMAN. Yes.

Mr. PIERCE. Why, yes; if the law authorizes them to enter into contracts with reference to these competing rates, there certainly does not occur to me at this time any reason why they could not attach penalties against each other for breaking that contract, but that does not have any relation to the question here. You will find there never will be any penalties in any of those agreements.

Mr. KENNEDY. This agreement does not make a rate.

Mr. PIERCE. Certainly not; that is what I am arguing.

Mr. KENNEDY. It seems to me you are on that side part of the time, and then you get over on the other side.

Mr. PIERCE. No, sir.

Mr. KENNEDY. The making of these agreements will not put any rate into operation, and the cancellation of the agreement will not necessarily cancel any rate?

Mr. PIERCE. Here is the operation of it. Two carriers agree upon a rate as between themselves. That rate does not go into effect until each has filed it. As you say, that agreement does not make the rate. After the agreement is made, then that agreement in order to become a rate must be embodied in a tariff to which the contracting railroads are parties and filed with the Interstate Commerce Commission and in all the stations and other places required to be filed, and there remain on file thirty days before it becomes effective.

Now, we have got a rate in effect. One of the carriers, we will say, decides to-morrow that it wants to cancel that arrangement. Then there would be good reasons why it ought to be canceled and there would be reasons why the commission would lend its sanction to the cancellation of it. This act says that the agreement may be canceled as to all or any of the agreed rates, fares, charges, or classifications by thirty days' notice in writing to the other parties and to the Interstate Commerce Commission.

The giving of thirty days' notice in writing to the Interstate Commerce Commission and to the other party does not cancel the rate. It still takes the filing of a tariff in accordance with section 6 of the act, or an amendment to the tariff or a supplement to the tariff, printed in accordance with the rules of the commission, which must remain on file thirty days before the rate can be canceled.

If two carriers to-day publish a joint through rate and it goes into effect thirty days from now and on the second day after it goes into

effect it is found absolutely necessary to cancel that tariff for some reason, the commission now has power to grant authority to cancel that tariff upon any short notice that they may see fit to give—usually three days' notice.

What I am arguing is that these agreed rates by the necessary effect of this language are tied up for thirty days and that the commission can not, by giving its consent, permit the cancellation of agreed rates. I am merely pointing out that that in certain cases might work very great hardship—a greater hardship upon the public than upon the railroad companies, and that some leeway should be given to the Interstate Commerce Commission to cancel agreed rates upon short notice, as they now have authority to permit any other kind of rates to be canceled upon short notice.

If my reading of the act is not correct and if this language is not susceptible to that construction, then what I have said amounts to nothing.

The CHAIRMAN. Supposing the carriers have made the agreement and without canceling it one of the carriers files notice of a change in the tariff. Is that a violation of the agreement? Does not the new tariff go into effect at the proper time?

Mr. PIERCE. I did not catch the first part of your question.

The CHAIRMAN. Supposing the carriers have made an agreement?

Mr. PIERCE. Yes, sir.

The CHAIRMAN. Agreeing upon a certain rate, and one of the carriers in violation of the agreement filed a new tariff sheet changing the rate, which controls, the rate or the agreement?

Mr. PIERCE. As to the public, the tariff will govern, the published tariff.

The CHAIRMAN. Then the tariff governs as to everybody?

Mr. PIERCE. Yes, sir; the published tariff with the Interstate Commerce Commission governs as between the public and the railroads. That fixes the rate and the only rate that can be charged. But as I said a moment ago, the mere making of an agreement does not make the rate. It takes first the agreement and subsequently the filing of a tariff with the Interstate Commerce Commission for thirty days before the rate becomes effective.

The CHAIRMAN. If the railroad company, in violation of the agreement, can make a rate—

Mr. PIERCE. In violation of which agreement?

The CHAIRMAN. There is only one agreement.

Mr. CALDER. With the other railroad.

The CHAIRMAN. Makes a rate in violation of the agreement which takes effect. Why can not they file it with the Interstate Commerce Commission?

Mr. PIERCE. They can not make a rate or cancel a rate in violation of the agreement.

The CHAIRMAN. Supposing they do it?

Mr. PIERCE. They can not do it, for this reason, that under the rules of the Interstate Commerce Commission each party is required to file a written concurrence.

The CHAIRMAN. That is not the case at all. Here are two railroads that are competing at a competing point. They file their rates separately. There is no connection in filing their rates. They both have an agreement that the rate shall be \$1, but one of them files a



notice the day after the agreement is made that at the end of thirty days the rate shall be 90 cents in conformity with law. The 90-cent rate will go into effect?

Mr. PIERCE. If the tariffs are filed.

The CHAIRMAN. I say if filed in conformity with law.

Mr. PIERCE. If the tariffs are filed the rate will go into effect.

The CHAIRMAN. Notwithstanding the agreement?

Mr. PIERCE. Yes, sir; notwithstanding the agreement. They go into effect now if the railroads to-day, notwithstanding the state of the law, get together and make an agreement which is in plain violation of the law, and file the tariffs, they go into effect as between the public.

The CHAIRMAN. As between everybody?

Mr. PIERCE. Yes, sir; as between everybody.

Mr. KENNEDY. Suppose we pass this bill in its present form, do you think one carrier can not be given a status in court to compel specific performance against another of one of these contracts?

Mr. PIERCE. If this language means that the carriers can make a valid agreement for rates for thirty days, then perhaps a bill of this kind would lie. But I am not so sure whether that is a sound proposition of law or not. Unless this agreement is forced by the terms of this act to remain in effect for ten days, under my view of the law I do not believe it is permissible for any carrier to make any contract to continue any particular rate for any given time, because I think such a contract is against public policy. The railroads all owe a duty to the public to charge reasonable rates, and only reasonable rates, and to keep themselves in position at all times to change or modify those rates so as to conform to the law and to their duty to the public. Any contract which would have a tendency to prevent them from changing their rates from day to day or any practice that ought to be changed, to make those rates reasonable or those practices reasonable, is, in my opinion, an unlawful contract and against the public policy.

Now, the next section I want to take up for just five minutes, as I see I have but five minutes left, is section 8, which has reference to furnishing a quotation of rates in writing. Beginning on page 15, with line 1, this act says:

It shall be the duty of every such railroad corporation to keep at all times conspicuously posted in every station where freight is received for transportation the name of an agent resident in the city, village, or town where such station is located, to whom application may be made for the information by this section required to be furnished on written request; and in case any carrier shall fail at any time to have such name posted in any station, it shall be sufficient to address such request to "The Station Agent of the \_\_\_\_\_ Company at \_\_\_\_\_ Station," inserting the name of the carrier company and of the station in the blanks, and to serve the same by depositing the request so addressed, with postage thereon prepaid, in any post-office.

Now, the effect of that provision is to permit any person at any station to ask for a quotation between any points either on its line or to any points off of its line covered by through tariff. Suppose that a shipper at Ruston, La., a point on the line of the Rock Island, should drop into our station and ask for a quotation of rates on a shipment that he had in contemplation or desired to make from Topeka, Kans., to McFarland, Kans. I take it that under the broad language of this act that would be permissible. If that is permissible, it is a requirement that can not be complied with. Neither the Rock

Island Railroad nor any railroad could keep on file at every station on its line of road every tariff which it publishes alone or in connection with any other railroad. Regardless of how strict the requirements of the law were, it would necessitate such an expenditure of money as would absolutely bankrupt it. The number of tariffs, the volume of them, the expense of keeping them is so great that you would have to have a separate office building for a complete file of the tariffs of the Rock Island Railroad of that kind. I say that it is absolutely a ruinous provision. It is absolutely unworkable, and it can not be complied with, because, in the first place, you could not get the room; you could not supply the room at your stations without the building of new offices; you could not keep these tariffs without a force of clerks and experts to do it. We have not got a station agent on our line that could perform half of his duties and attend to this. There is not a station agent that could half take care of such a file.

The CHAIRMAN. Can not they telegraph to headquarters? They know enough to do that?

Mr. PIERCE. Oh, yes, sir.

Mr. TOWNSEND. There is somebody on your line that knows that rate?

Mr. PIERCE. Yes, sir; but this says it shall be the duty of every railroad to keep at all times conspicuously posted the name of the agent.

The CHAIRMAN. To whom application may be made.

Mr. PIERCE. Yes, sir; to whom application may be made. But it ought not to be that we have to quote rates all over the United States. We have got a file of tariffs there now at every station applicable to that station.

The CHAIRMAN. If a man makes application to your railroad agent, can he not ascertain from the central office what the rate is? Is not that feasible and practicable?

Mr. PIERCE. Well, I suppose they could use the telegraph wires for that purpose by telegraphing to Chicago.

The CHAIRMAN. Is not that what they do now very often?

Mr. PIERCE. Doubtless they have to do that very often because sometimes the station agent is not himself able to decipher from the tariffs what the rate is. He gets a complicated situation, and it sometimes takes a pretty accomplished fellow along this line to do that.

The CHAIRMAN. Then this would not require an office maintained in every village or at every station equipped to give this information, I take it? If you have a central office prepared to give the information and your agent is applied to for the information, is it not perfectly practicable for him to apply to the central office for the information?

Mr. PIERCE. It is not a reasonable requirement.

Mr. TOWNSEND. In other words, you are doing just what you do now, only they are compelled to quote correct rates?

Mr. PIERCE. Yes, sir; but this is even broader. It is required now that tariffs applicable to a certain station shall be kept on file in that station, and we are not required to quote the rates. A man can go in there and ask for the tariff and see it. We are under no obligation at Ruston, La., to furnish rates between Topeka, Kans., and McFarland, Kans., as we would be under this provision. The chances for

a mistake and the burden that might be placed, I say, is an unreasonable burden, and there should not be any such requirement. If we are required to quote rates correctly then it ought to be at stations from where the man is going to make shipments, and where you require the tariffs now to be on file applicable to that shipment.

Mr. TOWNSEND. Of course you know it does refer to a described shipment?

Mr. PIERCE. Yes, sir; it refers to a described shipment.

Mr. TOWNSEND. And if a man comes in to-day and asks for it, you will try to furnish the information?

Mr. PIERCE. Then it should be limited to inquiry to be made at the station from which or to which the shipment is to be made.

There is another thing in that section that it seems to me ought not to be. This requires that you shall keep this notice posted up as to the agent. There is no penalty provided in connection with that, but under another section of this act the penalty would be \$5,000 for failure to post that notice, although you have provided another way to make the notice sufficient in case this notice is not posted. It is not practicable to keep this notice posted at all stations. We can not keep our tariffs posted there and the Interstate Commerce Commission recognizes that fact and has been compelled to modify the provisions of section 6 so as to relieve us of the necessity of posting tariffs in the stations. You can not keep your tariffs posted in the stations. They will not stay there if you post them there, and it has been demonstrated that it is an utter impossibility to do it. These notices will be torn down, and in addition to that the agents are changed so frequently that it would be a practical impossibility to keep up with these changes in these notices.

Now, you have provided an effective way here by which you can address this notice to the agent. For failure to keep one of these notices posted you impose upon the railroad company a penalty of \$5,000. That is another one of the details and the burden of the regulation of an immaterial matter which it seems to me ought not to be, because if there is to be any penalty for a failure to keep these notices posted, certainly \$5,000 is all out of proportion to an offense like that, which can not harm anybody, when you have provided another way for him to get that information and lay the proper foundation for a penalty in case he refuses to furnish it.

The CHAIRMAN. The fact is, you have gotten out of posting notices anywhere.

(At this point an informal recess was taken to enable the members of the committee to respond to a roll call, after which the session of the committee was resumed.)

The CHAIRMAN. Gentlemen, you may proceed.

**STATEMENT OF ROBERT S. WALKER, CHAIRMAN OF THE EXECUTIVE COMMITTEE OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY.**

Mr. WALKER. My name is Robert S. Walker, and my duties are as chairman of the executive committee of the Chicago, Rock Island and Pacific Railway Company.

My appearance is in reference to sections 12 and 13 of H. R. 17536, introduced by Mr. Townsend, and to sections 9 and 10 of Mr. Mann's

bill, H. R. 16312. The first proposal prohibits in certain cases the acquisition by one railroad company of the stock or property of another; the second provides for the regulation and restraint of the issuance by railroads of their stocks and bonds.

I believe these proposals to be so new, so serious and so pregnant with consequence, that it is my duty to submit to your committee divers reasons why such legislation should be enacted, if at all, only after patient consideration of its many grave aspects.

Let me say at the outset that I am, by inheritance and by training, a believer in the interstate-commerce act as thus far enacted. The carriers of the country must be required to adjust themselves to the policy, adopted by the Federal Government in 1887 and of increasing importance with the growth of the gap between large businesses and small ones, that all shall be served alike and at the same rate. All railroad men yield without demur to the successive applications of this principle. Speaking for myself, every degree of regulation of rates and of service, no matter how drastic, as long as the essentials of equality to the shippers and just remuneration to the carriers are kept uppermost, is for the best good of the nation and the railroads alike.

It is the spirit of our institutions that all businesses and all men engaged in business or professional activities shall be free and unfettered. We have inherited from the earliest days of the common law an abhorrence of arrangements resulting in restraints of trade. Our markets and our intercourse between citizens are absolutely unhampered. Such restrictions as we deem permissible are only those of the nature of police regulations, affecting a few that the general good of all may be enhanced. Congress should depart from these fundamentals with great caution. A step backward would be the beginning of a new Russia in this hemisphere.

Now, note the intent of section 12 of Mr. Townsend's bill. It prohibits every railroad from acquiring the stock or property of any other railroad. This is nothing short of enacting that no man shall buy the house or the farm of any other man. It puts the nation in the position of restraining trade to a far greater degree than was ever attempted by any human being or corporation. It robs the public in advance of the saving and advantage that always follows the absorption of one line by another, accruing from decreased expense of superintendence, greater aggregate supply of equipment to adapt to the needs of the enlarged mileage, increased uniformity of operation, and better opportunities to improve the property out of the combined resources.

Mr. TOWNSEND. You do not understand that to mean that there is a prohibition of dealing in stocks of every railroad?

Mr. WALKER. I am coming to that in a moment. I think that is open to that interpretation. We must not fear mere bigness. It would be far worse to substitute static conditions for dynamic. It will hurt the public, much more than the owners of railroads, to take away the incentive to increase railroad systems and to upbuild and improve them. Capital can, of course, seek other fields, but the lack of interest in railroads by the men of large means and large views will soon show itself in neglected equipment, perilous roadbeds, and wretched operations. Beyond all this, however, the most portentous feature is the curb and restraint to be put upon initiative and ambition.

At the risk of disagreeing, let me add that I am taking section 12 at its most extreme meaning. It is the meaning that I believe to be the correct one, though other lawyers have other views. To my mind, the language seems as broad as its counterpart in the Sherman Act, "Every contract \* \* \* in restraint of trade or commerce." Mr. Townsend's phrase is to the effect that no railroad shall acquire the stock or property "of any railroad corporation which competes with such first-named corporation respecting business to which said act to regulate commerce, as amended, applies." As every carrier competes in such business with every other carrier, every conceivable acquisition is forbidden. For example, the Denver, Northwestern and Pacific, as part of a through route from Chicago to Steamboat Springs, formed in conjunction with the Burlington route, is in competition with the Rock Island as part of another through route from Chicago to Steamboat Springs. Hence neither the Burlington nor the Rock Island must buy the Denver, Northwestern and Pacific, though it is a natural extension of each and in no wise parallels either. Again, the Louisville, Henderson and St. Louis, as part of a through route in conjunction with the Chesapeake and Ohio from Washington to Kansas City, competes with the Missouri, Kansas and Texas as part of another through route via the Baltimore and Ohio between the same points. Hence the "Katy" must not purchase the Louisville, Henderson and St. Louis, though it is an obvious extension of its route and in no sense parallels it. Instances can be multiplied. Suffice it to say, that the clause is so inclusive that no one can foretell what, if any, limitations the courts will put upon its meaning. Were I advising a client, I should tell him the words could mean all that I have indicated. How unjust it would be thus to prohibit railroad acquisitions can be readily apprehended if we image the restriction extended to all other enterprises. No tanner may buy another tanner's business; no miner may buy another mine; no farmer another farm.

I do not know that the language in Mr. Mann's bill is less severe. It would, in my judgment, however, admit of greater latitude of interpretation. The words are "any competing common carrier," which might be taken to imply parallelism as well as competition in business covered by the Hepburn Act.

Mr. TOWNSEND. Now, you are speaking of the acquisition of a railroad and not part of the stocks as an investment, or anything of that sort? Your criticism applies to the acquisition of a railroad?

Mr. WALKER. Either stocks or property.

Mr. TOWNSEND. Would your criticism lie simply against an investment of stock of another railroad without the idea of owning it?

Mr. WALKER. Well, I have not looked at your bill from that point of view.

Mr. TOWNSEND. You referred to section 13, and section 13 refers to the acquisition of railroads?

Mr. WALKER. I mentioned both. I refer to either stock or property. I do not know that the language in Mr. Mann's bill is as severe. It would apparently admit of some greater latitude of interpretation. His words are "any competing common carrier." This might be taken to include parallelism as well as competition in business covered by the Hepburn Act.

Even if the words finally enacted cover only lines that are both parallel and competing, I do not now wish to concede that the policy of such a law would be sound or wise. What we are working for is low rates and good service. If there are three parallel lines, for instance, the acquisition of one by another does not destroy competition as long as the third remains separate; and at the same time such acquisition will result in many economies that will tend to bring down rates on the detached third line. Economists, indeed, have long argued that compulsory combinations are the true remedy for our difficulties. By such a method, the public would be saved the expense of duplication of officers and of all elaborate machinery for soliciting and advertising for business. With the interstate-commerce act still in force, the fair and reasonable rates could still be adjudicated and enforced, and on a lower level because of the economies mentioned. Compulsory combination, or unrestricted right of combination, would be far more in keeping with our American ideas than this new commandment, "Thou shalt not enlarge thy business."

No less violative of the American ideals is the proposal to regulate stock and bond issues. But I do not argue that here, in view of the other things that I wish to have time to say about that proposal.

Ever since railroads began they have been the creatures of the States where their lines lay. The only exceptions were the few lines chartered by Congress, where the lands to be traversed belonged to the Federal Government and were subject to state control only as to certain matters. The underlying idea was the same in both cases, viz, that the Government, be it State or Federal, having paramount jurisdiction of the lands to be crossed, should authorize and control the railroad. So the railroads have come forward through the years, amenable to the States for taxes, for rights to condemn necessary land, and for regulation of operating matters.

It is necessary here to mention the distinction, doubtless familiar to this committee, between regulation of railroads in their aspect of interstate carriers and regulation of their other functions. By Article I, section 8, of the Constitution, Congress has power to regulate commerce among the several States. But no pertinent power is conferred upon Congress as to any matters other than commerce. And the tenth amendment expressly reserves to the several States all powers not delegated to the National Government, while the fifth amendment decrees that no one shall be deprived of his property without due process of law.

The several States granted charters to the railroads. These charters are contracts, subject to amendment by the States, and only by the States. The result is the same as to railroads incorporated under general state incorporation acts; the railroad's powers are derived from and circumscribed by the act and can not be altered except by amending the act, which only the State can do.

Many, if not most, of the powers thus granted by the States have no relation whatever to interstate commerce. They are as readily applicable to a corporation running a crossroads blacksmith shop as to a railroad running through several States. They are the same whether the railroad runs 10 miles all within one State, or 10,000 miles in 20 States. They would fit equally well a corporation con-

ducting a hospital or a circulating library. Among such powers, granted or withheld by the several States according to their respective legislative policies, are the power to acquire extensions and the power to emit and negotiate stock and bonds. In the face of these well-known, firmly established facts, can it be that Congress intends to oust the several States from their exclusive control of these matters and announce a new universal policy in the making of which their legislatures shall have no voice? If so, can it further be possible that Congress means to do so by stretching the commerce clause to the breaking point? I can not believe it. It seems to me that we are contemplating a break, a revolutionary departure, as serious and as dangerous as if the proposal were to abolish state legislatures and govern the country exclusively from Washington. Certainly, as to the subjects proposed to be controlled, the result will be the same. You Congressmen are elected by the separate States, and I wonder if you can face your electorate and justify taking away from them so important a part of their sovereignty.

Another phase of the matter will permit brief mention. Congress has in mind the general welfare, not merely that of the shippers or of any special class. Therefore, consider for a moment the investor. He has bought his investment in reliance upon a state statute. Whether he owns stocks or bonds, he hopes for an added margin of safety through growth in mileage and tonnage. Likewise he looks to the State to protect him from misuse of the right to negotiate securities. The prudent banker or investor will not buy securities of corporations organized under the laws of certain of the States, because he deems those laws do not contain adequate checks upon fraud or reckless overissues. But he readily buys securities founded on the laws of other of the States, because he knows that sufficient safeguards are provided and that the courts of the State set a high standard for the acts of corporate officers. Yet this proposed legislation will destroy all the things on which investors have relied, and will substitute rules that they did not choose and probably would not choose if they could.

To speak of investors, moreover, illumines this subject from another angle. What has the Federal Government to do with the investor? Point out to me the constitutional provision that directs Congress to perform this beneficent function. If the avowed purpose of the law is to protect investors, then the statute will be unconstitutional from the outset.

Addressing myself now to the matter of the proposed restrictions upon the issuance of stocks and bonds, I should like to state, not only as my opinion but also as a proposition that can be established by sound logic, that the proposed restraints will not have the slightest effect in the direction of reducing rates. If they have any effect whatever it will be in the direction of raising rates, for reasons that I shall come to later.

Rates are made one by one; a single commodity is under consideration and the decision is then made as to the price to be charged for moving this commodity from A to B, A to C, B to C, A to D, B to D, C to D, etc. Under existing conditions scarcely a rate can be fixed by a traffic man save upon the basis of the competition of his neighbors.

I heard a traffic man say a few days ago that a railroad 400 miles long could fix the rates of every railroad in the United States up or down.

Mr. STAFFORD. Will you kindly explain how that is possible?

Mr. WALKER. It is possible in this way: If a railroad is connected at both ends with other railroads, it is bound to form a through rate from some distant point off of its line to another distant point off its line. If this intervening railroad decides its rates shall be different from what they have been, those different rates must figure in these longer rates. Those in turn affect the longer rates in the same commodities, and the thing extends across the entire country. Then the shippers interested in other commodities complain they are not getting as fair a deal as those in the first commodity, and that also spreads; and before we get through with it the changes made by that one small railroad have affected to a greater or less degree all the rate systems of the United States.

The traffic man and his neighbors in turn can afford to fix rates only upon such a basis as will render an adequate remuneration, taking into account such matters as weight, bulk, ease or difficulty of handling, the value of the commodity, amount of risk in handling the commodity, etc. A rate never is, and probably never was, fixed by taking into account the capitalization of the corporation fixing the rate. I greatly doubt whether the principal traffic man of any important railroad could correctly or even approximately state the securities that the railroad has outstanding or the amount of such securities. I can guarantee that none of them ever considers the securities when trying to determine a rate on a given commodity from one point to another.

Mr. TOWNSEND. Have you ever been interested in a case before the Interstate Commerce Commission?

Mr. WALKER. No; I have never appeared before the commission myself.

Mr. TOWNSEND. You know it is a very common practice, do you not, to insist that the rates will not enable them to yield a proper return upon the securities of railroad companies? That is a very common defense the railroad puts up.

Mr. WALKER. I was just going to mention that. There are some differentiations to be made there, I think, that explain that matter considerably.

Mr. KENNEDY. A railroad that has very large earnings would have more money for betterments and for the improvement of its system if it did not have to pay out so much in dividends. Do you not think that ultimately will affect rates?

Mr. WALKER. Yes, sir; it does, but usually to the disadvantage of the corporations upon whom this statute will fall most severely, namely, those corporations that from past history have inherited heavy capitalization.

Mr. KENNEDY. I can see that if a railroad should be built paralleling some of the overcapitalized roads, their dividends might be imperiled and they would have to reduce their rates by competition, would they not?

Mr. WALKER. Yes, sir.



Mr. KENNEDY. We ought not to allow the new road to overcapitalize just that the old road should continue to pay dividends.

Mr. WALKER. There is little danger of that. I doubt if an instance could be pointed out of a railroad the overcapitalization of which dated from the inception of that enterprise. The overcapitalization, when it occurs, ordinarily is after the property has become established and has a more or less intangible but perfectly real value known as earning power. A new railroad in a frontier country can not be said to have earning power until it has proven it.

Mr. TOWNSEND. Have you found anything in this bill which affects anything not already established?

Mr. WALKER. If I read the bill correctly, I think I have, Mr. Townsend. I would be glad, however, to have any misapprehension I may be under allayed on that score, and I would be greatly relieved also.

Mr. TOWNSEND. I wish you would point out where you think it would interfere with it if you find any such thing in the bill.

Mr. WALKER. As I understand the bill, it does not control the stock or bond issues of existing railroads. It makes provision for taking up existing stocks and bonds and reissuing them; and if you do issue stocks and bonds it will be for money to be used in railroad business and can not be issued for less than par except in the case of bonds. If you mean I think the act is to have a retroactive effect, I do not understand it that way at all. I do mean, however, that the sins of the fathers are visited upon the children very severely in railroads, and a railroad that comes into the hands of its owners with heavy capitalization, due to recklessness and foolhardiness in business, has to compete on equal terms with such a railroad as Mr. Kennedy speaks of which has low capitalization and earning power and ability to make betterments that will still more cheapen its efficiency.

But I believe that the claim is made that the rates are determined in the aggregate by the outstanding capitalization, and hence that restrictions upon the emission of securities are desirable in order to keep down the aggregate of capitalization, with the result that the rates as an aggregate will also be kept down. There are good reasons why this is not so. The misconception probably arose through the fact that on one or two occasions rates fixed by the Interstate Commerce Commission as reasonable have been successfully attacked by carriers on the ground that their rates as a whole (including the rate lowered by the commission's order) were not justly remunerative. To get at what was a proper remuneration, recourse has been had to the question of what was a proper rate of income upon the value of the investment represented by the railroad. In arriving at such rate of income consideration has been had of the outstanding stocks and bonds. At this point, however, it must be noted that stocks and bonds were considered in these cases as a quick and simple rule of thumb method of ascertaining what might or might not be quite a different thing, namely, the value of the railroad property. Both in theory and in practice, a fair rate of return upon actual value is just, both as to the carrier and as to the shipper, but such value practically never has any accurate relation to the aggregate outstanding amount of stocks and bonds. In my judgment the majority of the railroads in this country are actually worth more than the aggregate amount of their stocks and bonds outstanding, and I believe

that a jury of impartial experts would so conclude in the case of almost any railroad property. I believe that the value of the property with which I am most familiar is many million dollars in excess of the total outstanding amount of stocks and bonds. From this view point, therefore, the shipper is getting a much lower rate than he would be entitled to if the rates were fixed on the basis of a fair return upon the actual investment value.

Mr. TOWNSEND. Do you mean the par value of stocks and bonds outstanding or the actual market value?

Mr. WALKER. The par value. Unfortunately for the valuation argument, it rarely happens that a single railroad is the only railroad running between two given termini. Competition between competing carriers has its play, and the rate is fixed thereby and without any remotest relation to investment value of the several properties. The result of this method of fixed rates, as has been seen over and over again in American railroading, is that the weakest road succumbs, is reorganized, tries again and perhaps succeeds, but more likely again fails, and is finally acquired by some stronger connection.

I therefore repeat that the idea of reducing rates through restraining the issuance of securities is illusory and an ignis fatuus. I probably can not do better than to read at this point an editorial appearing in the "Railroad Gazette" of February 4, 1910, which, you will notice, is as severe upon the corporation lawyer who defended his corporation as it is upon the Interstate Commerce Commissioner who attacked it.

I wish to say also before reading this that the mention of the Interstate Commerce Commission here is not my view; it is the view of the editor.

At a recent dinner of the New York Economic Club, Commissioner Clements, of the Interstate Commerce Commission, attacked the excessive inflation of the securities of the Chicago and Alton, but he attacked it, as usual, on the wrong grounds, while Francis Lynde Stetson defended it on almost the only grounds upon which it was indefensible.

Referring to the refinancing of the Alton, after the change of management in 1899, and to the stock-exchange scandal when John W. Gates got control of the Louisville and Nashville and had it subsequently bought away from him at a large profit to himself, "in both these cases," said Mr. Clements, "the added amount in stocks and bonds was taken out of the pocket of the public in increased rates." We wonder if Commissioner Clements has ever chanced to observe that the Chicago and Alton, running from Chicago to St. Louis and Kansas City, is not the only railway serving these points. As a matter of fact, the territory between Chicago, St. Louis, and Kansas City is, perhaps, the most highly competitive territory in the country, and we beg to inquire what the Wabash, the Illinois Central, the Cleveland, Cincinnati, Chicago and St. Louis, the Chicago, Burlington and Quincy, the Chicago and Eastern Illinois, and the Pan Handle-Vandalia were doing while the Chicago and Alton was taking the amount of its increased capital out of the pocket of the public in increased rates between Chicago and St. Louis? It would be interesting also to know who chloroformed the Wabash, the Chicago, Rock Island and Pacific, the Chicago, Burlington and Quincy, the Atchison, Topeka and Santa Fe, the Chicago, Milwaukee and St. Paul, and the Chicago Great Western while "the added amount in stocks and bonds was taken out of the pocket of the public in increased rates" between Chicago and Kansas City?

Of course, the contention that an isolated road in a highly competitive group can raise its rates for any cause whatever, whether based on its own stern necessities or on the pleasure of the chase, and still do business, is arrant nonsense, and the man that made such a statement is conspicuously unfit to be a member of the Interstate Commerce Commission.

But when Mr. Stetson rose to reply he attempted to defend the Alton and the Louisville and Nashville financing on moral grounds, which was hopeless. Why there should be so much obscurity in people's minds over so plain a subject as this is beyond

us. In regions where there is either actual or potential railway competition overcapitalization can not affect the rates; it can seriously damage the minority stockholder, and therefore is wrong morally; it has a bad effect on the financial credit of the railway which is the victim of it, and therefore is bad railway practice. The public using the Chicago and Alton Railway has not been damaged to the extent of 1 cent by the overcapitalization of this property, but the wings of the Alton were clipped when the transaction took place, because it was thereby denied for a long period of time the privilege of obtaining new funds in the world's money market—except at prohibitive cost. Therefore, actual damage was done to the company's credit, but no harm was done, or could possibly have been done, to the traveler and the shipper.

We have discussed the case of the Alton rather than that of the Louisville and Nashville because the principles involved are more sharply pointed. In the Louisville and Nashville affair the overcapitalization was not serious—a fact conclusively demonstrated by the company's high financial credit at the present time. But the Louisville and Nashville could no more take the increased capitalization out of the public in the form of higher rates than the Alton could. The Louisville and Nashville is a less simple and compact property than the Alton; it has one kind of competition between Cincinnati and New Orleans and another kind between the Birmingham district and the Atlanta district, while between Louisville and Memphis or Nashville and Memphis it has still a different kind of competition. But in the whole Louisville and Nashville system there is not one single line which has not some effective competitor, unless we except two or three minute branch lines which are not important enough to attract competition. What would the Queen and Crescent, or the Illinois Central, or the St. Louis and San Francisco, or the Mobile and Ohio, have done if the Louisville and Nashville had attempted to increase its rates at the cost of the public? They would have taken all the company's business and left a very handsome railway entirely idle.

We take this opportunity again to thrash over familiar ground because we are determined to drive from Ireland the snake named "cost of service." Rates are not made in accordance with what the work costs the railway or what the railway would like to earn; they are made on a basis which will permit the traffic to compete effectively in the markets of the world. Oranges from California, Florida, and Jamaica compete in New York City, but they are sold on a quality basis, not on a distance basis; the buyer is not at all interested in protecting the railway companies from any loss they may have incurred in competing with a steamship company. If rates were made on the "cost of service" theory there could be no competition in the country at all, since the line with the lowest operating costs would get all the business, and the other lines serving the same points would get none whatever.

Mr. TOWNSEND. May I interrupt you there, Mr. Walker?

Mr. WALKER. I will be very glad to have you do so.

Mr. TOWNSEND. Your theory of the case is that overcapitalization results in injury to the railroad itself, or to the minority stockholders, I believe you said—or, rather, you agreed with the report in the paper that said so?

Mr. WALKER. Yes.

Mr. TOWNSEND. It has been frequently argued before us by railroad men that any burden that is put upon the railroad must ultimately come out of the consumer; that the man who purchases transportation for freight or passengers must pay eventually for these things and that we are not benefiting but are injuring the consumer. Does not the mismanagement of a railroad by overcapitalization and overbonding to the extent mentioned in this article react eventually upon the shipper?

Mr. WALKER. I think you need to distinguish between the burden that is put upon the carriers as a whole and the burden that is put upon a single carrier. This statute will act here and there upon a carrier, with the result that the weak ones will be unable to finance further and will go to the wall.

Mr. TOWNSEND. You have not discussed that part yet. We have not learned from you why it will put a burden on it. You have condemned the proposition, but you have not argued it.

Mr. WALKER. On the other proposition, you will have to discriminate between burdens universal and a burden single. I have in mind, for the purpose of illustration, the Chicago Peoria and St. Louis, which, through excessive capitalization, went into the hands of a receiver in July, and one of the first things it was enabled to do was to get an injunction against the enforcement of the 2-cent passenger fare law. So the result of the overcapitalization in that single case, for the time being, and as long as the road is in the receiver's hands, was an increase in the cost to the public of the service rendered.

Mr. ADAMSON. I hope you will explain how it is that these restrictions will operate most heavily on the new and weak enterprises.

Mr. WALKER. I would like to distinguish, first, between the "new" and the "weak."

Mr. ADAMSON. Well, the new ones are generally weak ones, are they not? They have not been able to establish themselves yet.

Mr. WALKER. But a new railroad may be moderately capitalized and have a sufficiently strong backing to get along all right under this law, while quite an old railroad—

Mr. ADAMSON. Sometimes it is very strong, and the world has not found it out yet.

Mr. WALKER (continuing). While the old railroad may have such a burden of debt incurred in the past that it is really weaker than the comparatively untried enterprise.

Mr. ADAMSON. Yet that is not always known.

Mr. WALKER. It is, however, more known since the accounting regulations provided by the Hepburn Act than ever before. My feeling is that publicity with regard to railroad affairs is so great that no investor who desires information should be excused for not knowing anything he wants to know about the inside of a railroad. I do not know of anything that can not be obtained readily from the Interstate Commerce Commission on request, because it is all in our published reports.

Mr. WASHBURN. If it does not interrupt you, I would like to inquire at this point if I am right in understanding you to say that the legislation suggested in section 12 is quite without precedent anywhere in this or any other country?

Mr. WALKER. No; what I meant to be understood as saying was that it is without precedent in the distribution of the powers that we have under our constitutional system in this country. Several of the States have taken it upon themselves to regulate stocks and bonds; but the General Government has not done so, and has no paternal power over the matter which would entitle it to do so.

Mr. WASHBURN. There has been legislation in many of the States that is quite as comprehensive as this, has there not?

Mr. WALKER. Oh, yes; you wanted me to say in what respect this legislation would operate detrimentally to the overcapitalized roads. I think it would work in this way—

Mr. TOWNSEND. First, tell me how it affects the overcapitalized roads. What provision of the bill affects overcapitalized roads?

Mr. WALKER. It has no retroactive effect, as I said before, as to an overcapitalized road. Any banker can tell you which are and which are not overcapitalized. It has not gotten par, and ordinarily it gets nowhere near par, for its bonds. I think you want to be understood as intending that this bill shall accomplish something if passed. Now,

if it is going to accomplish nothing but for the Interstate Commerce Commission to say that the market value is what a banker will offer for the bonds of a given company below par, why pass the bill? If the commission is only going to make the statement of what is an everyday occurrence with the ordinary banking concerns of the country, why pass the bill?

I take it that the commission will adopt standards of its own (and it will have to justify its work under this law), and instead of taking the banker's figures they will perhaps fix an arbitrary rate of commission that the banker may receive. It will adopt the rule that the previous month's market value, or the previous six months' market value is a fair test (which it frequently is not), or it will in some other way fix a price upon securities that are salable only below par, at such a figure that the railroad simply can not sell them, and must struggle along as best it can, turning its earnings over and over, running up its floating debt as long as the bankers will lend it any money to add to its floating debt, and finally succumbing.

I can not believe from my experience in other States that any value is to be added to the securities by the approval of the Interstate Commerce Commission. I doubt it any American banker would consider that an element of value.

Bankers in examining our securities to-day give our matters a more thorough examination, and they give both the present and the future at least as comprehensive a search as the Interstate Commerce Commission could do. That is my explanation of the damage to be done to overcapitalized roads.

Mr. TOWNSEND. Conceding, for the sake of the argument, that the Interstate Commerce Commission would have constitutional authority to do this if it were vested in it by the Congress, do you believe there should be no regulation at all upon the issuing of stocks and bonds?

Mr. WALKER. We have regulations in all the States as far as stocks are concerned. Bonds are in an entirely different category. If you were running a country bank you would not welcome any statute that told you at what rate you must accept everybody's note. If you were running a country bank you would lend to some, you would insist that others put up collateral in addition to their signatures, and you would absolutely refuse to lend to others. That is just the way the banker looks at it. The railroad's note is good, bad, indifferent, or worthless, as the case may be.

Mr. KENNEDY. Every railroad corporation is in a sense a part of this Government, administering a public highway. Do you not think there ought to be some restriction upon their capitalizing themselves to build upon a speculative basis a new road that there is no business necessity for now?

Mr. WALKER. I should have answered Mr. Townsend's question further. What I have in mind is this: You are approaching this subject apparently from the point of view of the investor. The Republican platform spoke only of interstate carriers, but that, I suppose, was because it was not considered at the time of the drafting of the platform that anything but interstate carriers could be controlled by such a law as this. It seems to me, however, that if you are going to safeguard investors in that way, to make sure that dollar for dollar is behind every investment, it is most unjust to begin on the railroads, which are already the most watched and searched

and overseen members of our community, and leave untouched mines, patents, chemical processes, manufacturing enterprises, and all the other things in which investors are defrauded ten dollars for one every day as compared with railroad securities. I can not see that the reason for controlling railroad securities is of such a great and important nature as to justify this legislation. It is my firm belief that a case like that of the Alton, for example, can not occur again. No banker would lend himself to it, knowing that the accounts of the railroads are now so scrutinized by the Interstate Commerce Commission.

Mr. WASHBURN. You spoke of this legislation as being an infringement of the rights of the States. Is it your opinion that where in any of the States there is legislation touching the issue of new securities which is more drastic than this, that this proposed federal legislation would in any way affect that state legislation?

Mr. WALKER. Does it not seem to you that this law must be sustained, if at all, under the commerce clause? If under the commerce clause, then it falls within those federal decisions that matters of regulation under the clauses of the Constitution are left to the several States until Congress has acted, and when Congress acts it takes exclusive control of the field. I believe I state it correctly.

Mr. RICHARDSON. And then the state law is superseded.

Mr. WALKER. Yes; and it becomes entirely obsolete.

Mr. WASHBURN. I am not quite through with this line of inquiry. The laws of the State of Connecticut are somewhat more liberal than the laws of the State of Massachusetts on the matter of the issuance of securities of railroad corporations. For instance, the New York, New Haven and Hartford Railroad is chartered, as you know, under the laws of Massachusetts and Connecticut. Recently in Massachusetts the New York, New Haven and Hartford very largely increased its capital stock, as it had a right to do under the laws of Connecticut, and issued a lot of new stock; and it also acquired stock in the Boston and Maine road; and both of those transactions were held to be in contravention of the law of Massachusetts. The attorney-general of Massachusetts gave it as his opinion that the charter could be forfeited, and the New York, New Haven and Hartford road was compelled to part with its holdings of the Boston and Maine stock. Now, the question as to the forfeiture of the charter was referred to a committee consisting, as I now recollect it, of the commissioner of corporations in Massachusetts, the savings bank commissioner, and the railroad commission; and referring directly to this proposed legislation that committee made the following report:

This suggested possible solution of the questions before us naturally leads us to federal control. The national administration has already indicated its policies, and it remains only for the Congress to take legislative action. The President of the United States has declared in favor of such national legislation and supervision as will prevent the further overissue of stocks and bonds by interstate carriers, and recommends the enactment of federal legislation to secure such result. He states in detail in his message his views with respect to the rule of corporate conduct attaching to such issues. If the suggestions of the President should receive the approval of the Congress, it will be found that the additional federal supervision of interstate carriers will, in part at least, solve some of the questions now presented to this board.

Conveying, by implication at least, a certain measure of approval of the federal supervision that should remove from the domain of discussion such differences as arose out of the fact that the laws of Con-

necticut were very much less strict than the laws of Massachusetts on this question of the issue of securities by railroads.

Now, do you not think that federal legislation would at least put at rest those conflicting questions as between adjoining jurisdictions, as between one State and another, and to that extent be a distinct advance?

Mr. WALKER. At the outset, until the federal statute had been adjudicated as valid, it would simply create conflict, I would say.

Mr. ADAMSON. It would only tend to arouse conflict until the Supreme Court knocked the federal statute in the head.

Mr. WASHBURN. I, of course, did not predicate my question on the basis of an unconstitutional act. I was assuming that the act would be sustained.

Mr. ADAMSON. When you wipe Massachusetts and Connecticut both off the map of the States, that kind of legislation can be sustained in this country.

Mr. WASHBURN. Then this country will cease to exist.

Mr. ADAMSON. That is true. When one State dies all States will die and the Republic will die. If centralists realize that they assail their own State when they assail other States centralization would go out of fashion in this country.

Mr. RICHARDSON. Do you believe that section 12, that you have been discussing, of this bill, if enacted into law, would prohibit a railroad company from buying the stock of a railroad or purchasing the railroad itself, where it is not in competition with that road at all?

Mr. WALKER. I am saying that that is a possible interpretation and one I should not be willing to decide at this time the other way. I believe that that prohibits any acquisition,

Mr. RICHARDSON. You believe that this law would prohibit a common carrier on the eastern part of the country from buying a common carrier on the western part, with which it has no connection and could not have?

Mr. WALKER. I should go as far as that. They do have competition.

Mr. RICHARDSON. You think that all of the roads in the country are in competition with each other?

Mr. WALKER. Every road in this country is in competition with every other road, as far as the business covered by this act is concerned. You see, the language is "Respecting business to which said act to regulate commerce, as amended, applies."

I think if you can pick out a single instance where a railroad, even in eastern Georgia, we will say, does not compete in some way with a railroad in western California.

Mr. RICHARDSON. But in construing this act a court would evidently take into consideration the intent and purpose of it. What is that? It is to prevent any railroad from interfering with lawful competition.

Mr. WALKER. We had similar hopes as to the language of the Sherman Act, which were very much blasted.

Mr. WASHBURN. Can you tell me, from knowledge or from recollection, in how many States of the Union the railroads are prohibited from holding stock in other corporations?

Mr. WALKER. No. I know something of the Rock Island States, as we call them. They are comparatively few. I think the regulations of Illinois are rather—

Mr. WASHBURN. In Massachusetts no railroad corporation can hold stock in any other corporation, except in some specified cases.

Mr. RICHARDSON. I would like to ask you a question with regard to the matter of interfering with the States, about which you expressed an opinion. Do you believe, where a railroad had originated and been chartered, say in the State of Massachusetts, and certain statutes had been enacted allowing it to issue stock and bonds, and it was confined entirely to that State, that this act would interfere with anything of that kind? I want to get your idea about State rights now.

Mr. WALKER. It is for any purpose connected with or related to any part of this business covered by the act to regulate commerce as amended. If an old narrow-gauge railroad entirely within the State of Colorado is amenable to the provisions of the Hepburn Act, I do not know why any difference should be made.

Mr. ADAMSON. If the capitalization, or the bonded indebtedness, or the earnings, or any one of the three, is material information upon which to determine proper rates, is it not possible to obtain the information from the company, and for the Government to secure that entire information without attempting to usurp the power of control and restrictions on the details of these corporations?

Mr. WALKER. I thoroughly believe that that would be entirely practicable and desirable.

The CHAIRMAN. Give me your opinion on this: The Pennsylvania Railroad has lines east of Pittsburg and lines west of Pittsburg. They are in competition with the New York Central line. If there were two separate companies owning those lines east and west of Pittsburg, and both lines were used as a through route in competition with the New York Central, would the eastern line be prohibited from acquiring the western line under any of these provisions?

Mr. WALKER. I think that is within the meaning of the section as it stands in the Townsend bill.

The CHAIRMAN. What part of the Townsend bill would prohibit that?

Mr. WALKER. The language I read before:

Any railroad corporation which competes with such first-named corporation respecting business to which said act to regulate commerce as amended applies.

The CHAIRMAN. The line west of Pittsburg is certainly not in competition with the line east of Pittsburg.

Mr. WALKER. I do not see why not.

The CHAIRMAN. If it constitutes a through route, how is it in competition? How is one of those lines in competition with the other?

Mr. WALKER. A single line can be, within the meaning of that language, I believe, in competition with itself. The Pan Handle, we will say, running west of Pittsburg, is in competition with its route in connection with the Pennsylvania as against its route with the Baltimore and Ohio.

The CHAIRMAN. That might all be, but then this is a railroad. Whether it is in competition with itself does not make any difference. It would not be competition with itself. Here is a line east of Pittsburg that has a through route over a line west of Pittsburg. In what respect is the line west of Pittsburg in competition with the line east of Pittsburg so that under the provisions of this bill the line



east of Pittsburg would be prohibited from acquiring the line west of Pittsburg?

Mr. WALKER. In the respect that either of them forms a through route with some other line.

The CHAIRMAN. That is another question. You are assuming that they do.

Mr. WALKER. Assuming that they do or do not?

The CHAIRMAN. You are assuming that they do.

Mr. WALKER. You mean if there is only one line?

The CHAIRMAN. I am assuming that there is a through route over the two lines.

Mr. WALKER. And that there are no other through routes formed in combination with either? Is that a part of your assumption also?

The CHAIRMAN. I suppose that would be so, as to particular places, yes.

Mr. WALKER. And no possibility of divergence at the eastern extremity of one, and at the western extremity of the other. You see all that has to be considered. If we had a line running through an absolutely unsettled country east, and another line running through an absolutely unsettled country west, not crossing or intersecting any other railroads, then I think perhaps neither could be said to be in competition with the other. But the trouble is that each of those roads has business to deliver to a number of other roads at various points on the line, and as to that business they get in competition with each other.

Mr. RICHARDSON. Mr. Walker, I am very much interested along the line of hearing your full views on the question of the right of a State, and the right of the Federal Government, or Congress, on this subject. A great many of the States, as you know, grant railroad charters. All of them grant them more or less. The Government does not grant any at all now. The States all grant their railroad charters, and then frequently, subsequent to the granting of the charter, they pass a state statute allowing the consolidation or reorganization of a railroad. Now, suppose this bill here were to become a law, and the reorganization and consolidation were to take place after this became a law. What effect would it have?

Mr. WALKER. My belief is that unless the promoters of the enterprise could satisfy the people investing in the securities—the bankers, or whoever they might be—that the securities were safe, and complied with all the requirements, both of the Federal Government and of the state government, those securities would have no market.

Mr. RICHARDSON. It would destroy them?

Mr. WALKER. Yes.

Mr. RICHARDSON. Well, now, you have correctly stated that a charter of that kind, granted by a State, could not, of course, be amended by the Federal Government—by Congress. In what way could Congress get charge of that charter, it being an interstate railroad and running from one State to another? Could it get charge of it by authorizing the corporation voluntarily to come in and take out a national charter? Would not that give the Federal Government control and charge of it regardless of the state law as to consolidation and reorganization?

Mr. WALKER. Well, that opens a large question. It is almost impossible to foresee what the effect of a federal license would be. For

example, I, as a railroad lawyer, would wonder very much what I could do in the way of condemnation with a federal license. The United States Government condemns property for arsenals, public hospitals, and federal jails, which are most distinctly functions of the Federal Government. Whether it could so far claim that an interstate railroad was a federal function as to permit additional condemnation there I think is a very grave question. The whole point about the securities is that the bankers and the investing public are so used to elaborate safeguards, so careful about getting safeguards, that to pass a law which casts the slightest doubt upon the validity of any issue, or even throws difficulties in the way of getting out an issue, is to work a great hardship, and to make those securities exceedingly difficult of sale. I have in mind an instance where it was intended that one railroad should guarantee the bonds of another railroad. The guaranteeing railroad had the right to own the bonds of the other, and to guarantee them if the other were a connecting extension. It had running rights under an indefinite trackage contract over a stretch of line 21 miles long connecting several thousand miles of one railroad with several hundred miles of the other. Counsel for the bankers deemed that to cast such a grave doubt on the validity of the guaranty that the bankers were recommended not to buy the bonds thus guaranteed, and they did not buy them.

The slightest question of this kind is fraught with so many difficulties that they can hardly be foreseen. Furthermore, they get nowhere in the direction of more adequately serving the public or of lowering the rates.

There is another thing in that connection that I should like to refer to. We are putting this additional work upon the Interstate Commerce Commission. The market reports of New York City alone contain daily mention of one, two, three, and sometimes eight or ten, sales of blocks of railroad bonds to this banker or that banker. The commission is already more than swamped by the amount of work that is before it. The approving of these issues of securities would be deemed of such importance to the proprietors of the railroads and to the bankers that they would employ the best counsel and make the most thorough kind of a fight before the commission. That would mean a great waste of time. It would mean that the commission would be practically never out of session on railroad stock and bond applications, to the great detriment of the shippers who are waiting in court to get their rate cases heard.

MR. TOWNSEND. The bankers are greatly interested in this proposition, are they? Or they should be?

MR. WALKER. I should think they should be. Their seeming acquiescence is either due to their not having heard of it, or to not having philosophized upon it sufficiently.

MR. CALDER. Are you familiar with the issuance of the bonds of the New York City surface railroads some years ago?

MR. WALKER. Yes.

MR. CALDER. Do you not think if the railroad commission at that period had been clothed with the same power as is our public-service commission that those roads would not have been overcapitalized as they were at that time?

MR. WALKER. Yes. Of course there was a case where a local State public-service commission would have had complete control

of the entire subject-matter, and the prevention of those evils would have been a great public benefit. It does not affect the rate—it remains at five cents—except that we lost our transfers.

Mr. TOWNSEND. You approve of this regulation by the States, do you?

Mr. WALKER. I accept it when it comes. We do what we can to live under it.

Mr. TOWNSEND. But it reaches a real evil, does it not?

Mr. WALKER. It reaches what probably has been a real evil. I doubt if the future is going to see another instance of that kind. Most of the States require us to sell stock at par anyhow. There is nothing novel in that provision. It is the bonds that I am talking about mainly. They are just as much to be sold at a price as eggs or butter or any other commodity.

Mr. TOWNSEND. Do you know of any case where state regulations with reference to the issuance of stocks and bonds have embarrassed any legitimate railroad enterprise?

Mr. WALKER. That is a very hard question. The State of which I hear the most is Texas. Mr. Russell does not seem to be here. [Laughter.]

Mr. TOWNSEND. He may want to revise the record when you get through with it.

Mr. WALKER. I wanted him to check me in case I made any misstatement. Texas's stock and bond law is a very wooden affair. It gives us no latitude, and it practically prevents any construction in Texas by any railroad not operated there and that has not connections and resources back of it. It seems to put an absolute stop upon individual initiative in that State. That is the apparent outworking of it.

Mr. RICHARDSON. That kind of legislation obstructs public enterprise.

Mr. WALKER. Yes. We can legislate all the honest dollars we want to, but we can not prevent people from being spendthrifts or from being reckless, and we can not pass such a law as that all investors will be wise.

Mr. TOWNSEND. I may have misunderstood you, but I understood you to say that this would not affect new enterprises.

Mr. WALKER. No. I said that I differentiated between new enterprises and established ones overcapitalized. I think, on the contrary, it will raise some pretty serious questions as to the new enterprises. It would be my suggestion that some provision be added to the bill providing that it should have no effect upon a railroad until that railroad was at least, say, five or ten years old, because a railroad is such an absolutely untried experiment that you do not know whether it is going to succeed or whether it can haul profitably or not; and you just make your gamble.

The CHAIRMAN. Entirely new railroads are usually, are they not, wholly within the limits of a State?

Mr. WALKER. Yes; but still they are engaged in the business covered by this act.

The CHAIRMAN. Not until they are organized, and have tracks constructed, and have issued stocks and bonds.

Mr. WALKER. Do you mean if I choose to organize, in any State, my railroad with a capital of one hundred thousand or a million

dollars, with the rails laid flat on the prairie without any particular expense, that this act will have no effect on it until the railroad is built? I should be very glad to have the act mean that.

The CHAIRMAN. I do not see how it can. I am seeking information. I wish it could, and I hope it can, but I do not see how the act can have any control over a railroad that is wholly within a State before it carries any commodity across the state line, or does any interstate business.

Mr. WALKER. It seems to me that the issuance of stock, even in the first instance, is an issuance for a purpose connected with or relating to a part of the business covered by this act. Certainly, as a railroad lawyer, I should not advise a company of promoters or adventurers to engage in any such enterprise without first getting the requisite approval under this act.

The CHAIRMAN. Suppose they did. The Interstate Commerce Commission, of course, could not help them, and nobody could prosecute them for it. When the railroad is constructed would anybody have the power to prevent them from carrying on an interstate business?

Mr. WALKER. No; but how about afterwards when they should want to make extensions? Then they would reap the consequences of their folly very promptly.

Mr. STEVENS. The Interstate Commerce Commission could compel them to make through rates and through routes if they had a connection so that they could?

Mr. WALKER. Yes.

Mr. KENNEDY. Before they could appropriate property in any State they would have to set forth the purposes for which they were organized?

Mr. WALKER. Yes.

Mr. KENNEDY. They could only take their real estate upon the theory that they were going to be at least a common carrier?

Mr. WALKER. Yes.

Mr. STEVENS. The very power to be made an interstate route would be sufficient to make them come within this act, would it not?

Mr. WALKER. I believe so. At any rate, it is only putting off the evil day at best. Even if they could do it in the first instance, at the first subsequent issuance of securities they would be in trouble.

Mr. KENNEDY. Railroadings is thoroughly understood as a business proposition now everywhere. The prospects of the territory that you look at are not entirely a gamble. There is something certain about what is going to happen in the growth of the country. Do you think that railroads ought to be built upon a purely speculative basis, where the stock sells for 5 or 10 cents—

Mr. WALKER. No.

Mr. KENNEDY. Or a dollar?

Mr. WALKER. I do not think that.

Mr. KENNEDY. Suppose the Interstate Commerce Commission were given discretion about the bonds. I think that in building railroads a limit ought to be put in some way upon these gambling ventures in the way of promoting new railroads. They ought not to be built indiscriminately, but they only ought to go where there is an excuse for their going as a business proposition.

Mr. WALKER. Yes. The point I have in mind is this. A new enterprise of that kind can not be so carefully and correctly computed as to fix any particular amount of securities as the proper amount, and I do not believe the Interstate Commerce Commission is going to have any better means of judging than the adventurers themselves. Hence I say there is no justification for putting the commission at work on any such task. They would have to act conservatively, and the result would probably be just what we get in Texas. Mr. Roosevelt said a number of times that he believed the original exploiters of an enterprise, by reason of the risk they took, should have the opportunity of reaping a greater profit. It seems to me that that is a fair principle to be applied to all kinds of business in this country, and that it ought to be applied to the railroad business.

Mr. TOWNSEND. Have you read the last part of section 12 in reference to the determination by the court as to whether the acquisition of stock in a competing road or the acquisition of the road itself is a violation of the law?

Mr. WALKER. Yes.

Mr. TOWNSEND. Does not that cure some of the evils, or some of the imaginary evils, which you have seen?

Mr. WALKER. I should not think so. You can not expect a more favorable opinion, I should say, from a court than from a commission. Why should you?

Mr. TOWNSEND. That was intended to furnish some elasticity, at least, to the question as to what is a competing road. You have drawn it to the limit. You have said that all roads are competing, practically, and would be brought within the rule. Evidently the object in framing this proposed law was to prevent the acquisition of roads which do in fact compete, can be seen to compete, and thus to prevent monopoly as far as may be. This provision gives the court the authority to determine, and it may take into consideration in determining that question the relative importance of any benefit to the public interests by such acquisition. It seems to me it would shut out these very extreme cases which you have named.

Mr. WALKER. About the only justification for such an interpretation, from a purely technical, legal point of view, it seems to me, is the fact that this statute is made as part of an amendment to a rate law. The statute on its face does not show that it has any such idea in mind. If we should refer to the Republican platform in arriving at a decision in a case arising under this act that also does not show that it has anything to do with rates. It looks more like investors there.

Mr. RICHARDSON. I want to ask you a question on a subject that you discussed some few minutes since. I understood you to say, Mr. Walker, that overcapitalization had no effect on or relation to the fixing of rates; and you also said, as I understood, that it was unreasonable and not to be expected that there would be a physical valuation of the railroad—that that would not have anything to do with the rate—what the railroad was, the actual railroad.

Mr. WALKER. I said it does not. It should have.

Mr. RICHARDSON. Then, what does affect the rate? What is it that brings about the rate, if it is not the overcapitalization and it is not

the size and is not the physical value of the road? What is it that governs the railroad in fixing the rate?

Mr. WALKER. Competition.

Mr. RICHARDSON. Altogether and absolutely?

Mr. WALKER. In all but very few instances, with a railroad exclusively owning its own railroad.

Mr. RICHARDSON. I had an idea, along with people generally, as I thought, that you had to fix your rate in such a manner, according to the amount of stock you had and according to the amount of bonds you had issued, as to give the holders of that stock and those bonds a dividend.

Mr. WALKER. No; it is separate from the matter of the investment in the securities.

Mr. RICHARDSON. Then the railroad is not in competition at all. It charges what it pleases.

Mr. WALKER. Yes; but there are very few of them.

Mr. RICHARDSON. When they get into these great consolidations then they lessen the competition, and that authorizes them to charge higher rates, according to that reasoning.

Mr. WALKER. Well, there are very few combinations that have yet gone to such an extent that they minimize competition.

Mr. RICHARDSON. Is it not a fact that large railroad systems divide out sections of the country, where no other railroad will come in because it is a violation of courtesy, etc.?

Mr. WALKER. No.

Mr. RICHARDSON. That is not done?

Mr. WALKER. No, sir; it is a free-for-all race.

Mr. RICHARDSON. That has passed away?

Mr. WALKER. Yes, sir.

The CHAIRMAN. The competition that you refer to is not merely between railroads; it is also between commodities and manufacturers and shippers?

Mr. WALKER. Commodities in the world's markets and the world's sources of supply. All those things enter into it.

I have nothing further to say except that I will sum up by saying that the matter has this look to me. As between shippers and carriers the carrier is the great conserving force. It furnishes the distribution in the economic play of the country's activities. The carrier is the one thing that stands between the smallest kind of a small dealer and the largest kind of a monopoly or trust. Hence anything that can be done in the way of making rates fair to the shippers and to the carriers should be done, and it should be done by the Federal Government.

Turning, however, to stocks and bonds, those are things for sale. They are commodities, and the Federal Government has no more business to fix a method of determining the rate at which those things should be sold than it has to fix the price, locally, of oats, or corn, or hides, or the product of the mines, or any other product that you can think of. For these reasons I believe the Federal Government should continue as forcibly as it pleases to carry out rate-regulating features, and should abandon this suggested attempt to fix the price at which stocks and bonds, and especially bonds, should be sold.

I might also say that I have read the hearings in which Mr. James Burns participated the other day. I am not altogether in sympathy with what seems to be the object of those amendments. I believe that the shorter and more inclusive you can make the power of the Interstate Commerce Commission the better. I would rather give them a wide discretion over any sort of railroad financing that might come before them than to try to enact an inclusive text-book on every kind of railroad financing and refinancing that could be suggested. I could suggest a number of others not mentioned by Mr. Burns.

Finally, I believe that the regulation of stocks and bonds will result in the increase of rates. Whatever is done in the way of hampering railroads in their financing (which already is beset with many difficulties) will tend to force the weaker railroads to the wall, and to bring about the acquisition of such lines by their connections. (I am assuming that the provisions against such acquisition will be interpreted in such a way as to permit the acquisition of nonparallel extensions.) This process, if carried to its logical limits, would shortly result in the centralization of all of the railroads of the country in a very few hands, with the result that competition will be lulled to a minimum in many districts. If competition is removed, it can hardly be expected that the railroad managers, in their desire to upbuild and maintain their properties and to show good returns upon the funds invested in them, will raise rates when opportunities occur.

I believe it was Representative Adamson who pointed out a few days ago that the only basis on which the committee can report the stock-acquisition feature and the stock and bond feature of this bill is that these regulations will relate directly to interstate commerce. It is my hope and expectation that your committee will conclude that there is no relation between the interstate commerce functions of a carrier, on the one hand, and its chartered rights on the other hand, and will refuse to report these features of the bill.

#### STATEMENT OF MR. E. B. PIERCE—Continued.

Mr. WASHBURN. If this is an opportune time, I would like to ask one question before the witness starts.

The CHAIRMAN. Very well.

Mr. WASHBURN. We were discussing section 7, and Mr. Pierce suggested that everything after the word "unlawful" line 2, page 13 should be stricken out. I would now like to inquire in what way you think, if the balance of the section were stricken out, the Interstate Commerce Commission would get the requisite knowledge of the rates agreed upon by these common carriers as suggested in the part of the section that would be left untouched.

Mr. PIERCE. I think they get it under the provisions of section 6 of the act as it now stands, with reference to the publication of the tariffs. You understand, of course, that before these agreements as to the fixing of rates can become effective, the rates fixed and the fares fixed must be embodied in tariffs and filed with the commission thirty days before they become effective. The commission and the public will get seasonable notice of all of these rates and fares under section 6, which provides:

The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain

the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require, all privileges or facilities granted or allowed and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this act.

All those things must be contained in the printed tariffs, which are required to be posted and filed in accordance with this act as modified by the rules of the Interstate Commerce Commission.

It would be absolutely and utterly impossible to give to the commission or to the public any more information by filing these agreements than they can get from the tariffs which must be filed in conformity with the section which I have just read. Is that all on that point?

Mr. WASHBURN. Yes; with a single added question. I understood you to be of the opinion this morning that the conditions imposed upon the carriers in section 7 would be such as would make it almost impossible to comply with it.

Mr. PIERCE. Yes, sir; that is my personal opinion, that it would be almost impossible to comply with it. If it were possible to comply with it, it would involve such very enormous expenditures as compared to any possible benefit that might be derived from it that it would be imposing a burden that ought not to be imposed. I can not undertake to estimate it, but the cost of preparation of all the agreements that would be required under this section, in my opinion, would run into millions of dollars a year.

Mr. WASHBURN. You mean for all the railroads of the country?

Mr. PIERCE. For all the railroads of the country. I am speaking of the railroad situation as a whole. Including the stenographers, the traffic men, the lawyers, and stationery, and all the machinery necessary to put these traffic agreements in any intelligent shape, it is not a wild guess to say that it would cost \$4,000,000 or \$5,000,000 a year to file those agreements alone.

Mr. RICHARDSON. In addition to that, if copies of the agreements were filed according to that provision, you contend that the public would not get any more benefit from it than they derive now under section 6 of the act?

Mr. PIERCE. I say that they get the same benefits under section 6 of the act.

Mr. WASHBURN. That is, the same information?

Mr. PIERCE. The same information and the same benefit, too. What is the use of imposing on us all this additional labor when we are already overworked and overburdened by matters of this kind, and when the public is getting just the same thing in another form?

Mr. TOWNSEND. Do you not think you are greatly magnifying that? You are talking about all the possible things that can grow out of the agreement that you may have to put in form. Whereas, as a matter of fact, you get together and you discuss matters and each one goes away satisfied with the agreement—you know what it is. Do you not think that what you have agreed upon could be stated very concisely and very briefly?



Mr. PIERCE. Assuming all that to be true, assuming that you can get up brief contracts, I say that the number of them would be so great and the labor involved in preparing these brief contracts and the expense would be so great that neither the public nor the railroads would get from it anything like the benefit that should be obtained when you consider the expense that would result from undertaking to do it.

Mr. TOWNSEND. Do you make any record of the agreements now?

Mr. PIERCE. Only in the form of the tariffs as they are issued. I have no doubt that the western trunk-line committee have been at meetings where there has been some sort of a memorandum record of what was done. Occasionally, I know—last year or the year before last—the Interstate Commerce Commission called on all these trunk-line committees to file their records showing the results of these meetings, and that was probably done. It might be done in that way, in a very simplified form. But those minutes are very brief, and you would not get any information from them that would really do you any good. The only information as to the result of these meetings that would be of any benefit, as showing exactly what was done, would be that elaborate information that is worked out in the form of the tariffs, and this would not amount to anything more than refileing what is contained in the tariffs.

Mr. WASHBURN. It would be a duplication?

Mr. PIERCE. It would be practically a duplication. I think it would be a duplication. I am not arguing against it, if there is any benefit to be derived from it; but just as I said to the committee before, from a practical knowledge of the situation I know that the machinery for complying with all the rules and regulations we have is getting to be so extremely complicated and so extremely burdensome that it is almost a physical impossibility to comply with it; and neither Congress nor the legislatures should impose any more of this burden than is absolutely necessary. I think this is one of the things that would be absolutely unnecessary.

Mr. WASHBURN. I would like to ask you just one more question, and then I am done—

Mr. PIERCE. Let me answer Mr. Townsend a little bit further. I want to say, Mr. Townsend, that I may be stating the case a little bit strongly. I can not tell you in dollars and cents. I mentioned the figure just now as \$4,000,000 or \$5,000,000. That may be gross extravagance. I am merely giving my own impression.

Mr. TOWNSEND. Well, it occurred to me that this did not have to be filed until you proposed to put it into vogue, which would be at the time you made your change in the schedule. That you were going to do anyway; and if that is all there is to it, it occurred to me that there certainly could not be this great expense.

Mr. PIERCE. You would not want anything filed that would not give some information, would you?

Mr. TOWNSEND. No.

Mr. PIERCE. It would be useless to file a meaningless paper, would it not?

Mr. TOWNSEND. Yes; I do not know that there is anything improper about the agreements, or about the meetings that you hold. I notice that the shippers and others who have testified seem to think that there is something going on there that the public ought to know,

and some of them go so far as to think that that ought to be published before it is even considered as an agreement, and that the commission should consider in advance whether that agreement could be tolerated or not. I do not know. Of course this is a perfectly harmless thing that you have stated here. There is nothing wrong about that. You simply get together in a meeting and agree that this will be the schedule, this will be the classification, and so on, which would simply amount to a conclusion as to what the schedule is to be for the future that you are going to propose, and you give thirty days' notice of it.

Mr. PIERCE. Let us assume that this agreement is of the most injurious character and that it involves all kinds of moral turpitude in the way it is done and that it has not any good purpose. There is not any way now to stop the going into effect of rates made in that way, except by an order of the commission made after a hearing on the rates, is there?

Mr. TOWNSEND. No.

Mr. PIERCE. So that, conceding what you say in that respect, there is not any machinery now in force, and this bill does not provide any machinery, that arrests the effect of those agreements any sooner than they can be arrested under the provisions of the act which gives the commission power, upon its own initiative or on complaint, to suspend the taking effect of any rate that is filed. It is not how a rate is made that the shippers complain of, but what is the effect of that rate upon that business. Is it an unusually high rate, or does that rate discriminate? That is what they are looking after, and that is all they care about. If a rate is filed, and it is shown that it is an unreasonable rate or that it is an unduly discriminating rate, it does not make any difference how it was arrived at, whether honestly or dishonestly; and the commission under this bill, and even under the old law, can set it aside at a very early date.

Mr. TOWNSEND. This bill proposes to give the commission the right to act on its own initiative in this matter, and it can take into consideration all the elements which enter into that agreement.

Mr. PIERCE. Yes, sir.

Mr. TOWNSEND. And can terminate it at once, so far as that is concerned.

Mr. PIERCE. Yes, sir.

Mr. TOWNSEND. The agreement might have a great bearing upon the commission in determining the reasonableness of a rate or regulation.

Mr. PIERCE. If the commission hold up a rate, it is very easy, when they have an investigation, to find out how the rate is made. They do it.

Mr. TOWNSEND. Do you not think it would be of great advantage in that case to know what kind of an agreement was entered into to bring it about?

Mr. PIERCE. Yes, sir; the commission can have it, and they do have it. At every important rate hearing in three years that I have attended some traffic man has been put on the stand and grilled and grilled and grilled as to how the rate was made, and whether they did not get together around a table in the twentieth story of some building in Chicago, behind steel doors and locked doors, so that nobody could get in. All those things have been gone into; and while the

commission say that the mere fact that a rate has been made by agreement does not make it unlawful, because, notwithstanding it was made by agreement, still it is a reasonable rate and therefore proper for the shipper to pay, yet they will look into it, and see just what was done at the making of the rate. They still have that opportunity at these hearings, and it is only at the hearings that this information could be utilized.

Mr. RICHARDSON. They enter into these agreements with the full understanding that the Interstate Commerce Commission has full power to review the whole thing.

Mr. PIERCE. Certainly; they always have and they do now. They can not help it. There are no secrets in railroading any more. They do not go to lawyers and say, "Is it proper to furnish this to the commission?" or, "Should not we furnish it?" Our doors are thrown wide open. An examiner of the Interstate Commerce Commission called at my office the other day and asked to see my files, I being the attorney of the company, and he wanted to know what I advised about it. I did think it was rather going too far, but at the same time I threw it open and said: "There it is. Take it and get what you can out of it."

We do not do anything that we do not expect at any time to have subjected to the closest scrutiny by the Interstate Commerce Commission.

Mr. KENNEDY. After one of your meetings to fix rates, and after the making of these agreements, would it not be possible in a general way, in a very brief statement, to say what that agreement was, without all this detail and all these matters that you have talked about?

Mr. PIERCE. Well, some of these tariffs are as large as this [indicating].

Mr. KENNEDY. Yes; but you agree to raise the rate, or to fix a 15-cent rate from Pittsburg to Chicago.

Mr. PIERCE. Yes, sir.

Mr. KENNEDY. Of course that necessitates thousands of changes.

Mr. PIERCE. Yes, sir.

Mr. KENNEDY. But in your meeting you simply agree to fix that rate through that territory.

Mr. PIERCE. Yes, sir.

Mr. KENNEDY. That simple statement would be a statement of your agreement without going into—

Mr. PIERCE. If you merely mean for us to make a statement, for instance, that the railroad companies had gotten together and agreed on the rates from Chicago, say, to California, and you just want a statement filed containing that and nothing more, that is a very simple statement; but since it is made lawful by this act to make agreements, what good could that simple statement do, unless it gave the information as to what the rates were, and the rules and regulations under which those rates could be operative?

Mr. KENNEDY. I think that perhaps so far as the statement of your agreement is concerned, nothing more was contemplated in this law than to give the Interstate Commerce Commission notice of what railroads have entered into it.

Mr. PIERCE. That is a very different proposition. If you merely want a statement filed with the commission that on a certain date the

railroads got together and discussed and fixed the hog and cattle rates from Iowa to Chicago, and nothing but that, anybody can file a statement of that kind; but I do not understand that you want a statement of that kind. I understand that you want the agreement filed.

Mr. TOWNSEND. Surely.

Mr. PIERCE. And that agreement must set out what the rates are, and all the terms and conditions under which those rates can be used. To require such a statement as you suggest would absolutely give nobody any information. It would not be worth the paper it was written on, and would encumber the files of the railroad and of the commission, and would not do any good.

The CHAIRMAN. When you have an agreement to fix rates you do not sit down and agree upon the rates at that time, do you?

Mr. PIERCE. Whenever they have an agreement fixing rates, they certainly do. Otherwise the rates are not agreed on.

The CHAIRMAN. Then, would it be possible to have a meeting of some one to agree upon rates between Chicago and New York? Do you figure out all those rates at that meeting?

Mr. PIERCE. Would it be possible?

The CHAIRMAN. Is that what they do?

Mr. PIERCE. What they do is this: The traffic officers determine just what the adjustment of the rates will be, and outline a general basis of the rates. They furnish that to the rate clerk, and that outline has to be worked out in detail so that it will be harmonious.

The CHAIRMAN. I understand.

Mr. PIERCE. But this elaborate statement worked out from the general plan given is just as much a part of the agreement, if any agreement is made, as the general skeleton that is furnished.

The CHAIRMAN. Well, is it?

Mr. PIERCE. Yes, sir; certainly it is.

The CHAIRMAN. You have a meeting and make an agreement—

Mr. PIERCE. And then after that is all worked out it is published in the form of a tariff, and on the back of that tariff the tariff carries with it the names of the traffic officers who consented to or joined in the making of those rates. It will show on the back of the tariff just what roads are parties to it, and the name of some officer of the company, representing that road, who authorizes those rates.

I do not care to devote any more time to that. We have talked about it a great deal, and a good deal of stress has been laid on it. It is not a material thing, but it is a burdensome thing in the way of machinery, and it is an expensive thing.

Mr. TOWNSEND. I do not think that the committee or anybody else wants to put a burden on the railroads, without doing some good, but it seems to me you have greatly magnified the difficulties which can come from it. I wish I knew, and I guess every member of the committee would like to know the same thing, what is actually done when these traffic men get together—what is done at that meeting before you adjourn.

Mr. PIERCE. I have stated it as clearly as I can possibly state it.

Mr. TOWNSEND. Do you think it would cost a million dollars to do what you state is done at that meeting? Could not you, as a lawyer, state what the agreement was, and make a report very briefly?

Mr. PIERCE. Yes, if there was only one tariff; but I am talking about the railroad situation as a whole, and I am talking about all the adjustments of rates that are made in the course of a year.

Mr. TOWNSEND. You make these agreements through the trunk-line system, or through some general scheme, do you not?

Mr. PIERCE. Yes, sir.

Mr. TOWNSEND. And it is only the heads of the liner who meet and decide on these questions.

Mr. PIERCE. Yes, sir; they are responsible men in the traffic department. They can not send clerks or stenographers to do it. They have to send men who have knowledge of traffic conditions and who have had some experience in matters of that kind. I may have magnified it; I may have overstated the importance of the thing; but I am speaking from the bottom of my heart, as a man who has been called upon actually to undertake to work out the machinery in matters of this kind under the act—not only under the federal act, but under the state acts—and while if it was just this one thing we might be able to do it without very much trouble, yet you have got to remember that this is only one of hundreds of things that we have to do.

The CHAIRMAN. Let me see if I understand your position on that, because that is what is bothering me. If the railroad traffic men meet and make an agreement that the rates between two points on two roads shall be the same without fixing what the rates shall be, leaving it to subordinates to determine what the rates shall be, but the agreement being that they shall be the same, you think it would be useless to file that agreement, because that would mean nothing?

Mr. PIERCE. It seems so to me.

The CHAIRMAN. And it would be almost impossible, as a practical proposition, to file the agreement carrying out the rate?

Mr. PIERCE. Yes, sir; I say it would be a burdensome requirement and a useless one, in view of the fact that that very same information must be immediately followed up by tariffs, in the most elaborate shape, putting those rates and regulations into effect.

The CHAIRMAN. But suppose you only file the first agreement—that the rates shall be the same. The Interstate Commerce Commission will soon know what the rates are from the schedules that are filed.

Mr. PIERCE. Yes, sir; that is what I say.

The CHAIRMAN. Is not that all that is necessary?

Mr. PIERCE. That is what I have been trying to argue.

The CHAIRMAN. Is not that all the bill requires?

Mr. PIERCE. No, sir.

The CHAIRMAN. You make an agreement that the rates shall be the same. You do not decide what the rate shall be.

Mr. PIERCE. It requires an agreement:

If a copy of such agreement is filed with the Interstate Commerce Commission within twenty days after it is made, and before or when any schedule of any rate, fare, or charge, or any classification made pursuant to the agreement is filed with the commission.

The CHAIRMAN. Very well. Your high officers meet and agree that the rates between New York and Chicago over various trunk lines shall be the same, but you do not undertake in that agreement to fix what the rates on all commodities shall be. You leave that to the men who make the rate sheets.

Mr. PIERCE. No, sir.

Mr. TOWNSEND. That is the only thing the commission is interested in knowing—whether you have gotten together and agreed on this thing. That is the entire thing.

Mr. PIERCE. If that is all you want to know, and you want just a simple statement that the railroads have agreed on hog rates from Iowa to Chicago, and you do not want to know what the rates are, or anything of that kind, it is a very simple statement; but if you want to know what all the rates are, then, as I say, the preparation—

Mr. TOWNSEND. But they do not agree on that in the conference.

Mr. PIERCE. Oh, yes, they do.

Mr. TOWNSEND. They agree on that, then, at practically one time, and adjust the schedules to fit that?

Mr. PIERCE. Yes, sir.

Mr. TOWNSEND. And that would have to be filed with the commission?

Mr. PIERCE. Yes; but while the rates are fixed at about the same time they are not worked out in detail, probably, until afterwards. If you do not want the details, it is a comparatively simple matter.

There is one other thing that I want to say in connection with section 8. I have already spoken about the severe penalty there for failure to keep these notices posted as to the agent who can furnish quotations, and the impossibility of keeping those notices posted; and it seems to me that if you are going to make this requirement of the railroads, to publish rates in writing, you ought to repeal some other sections of the act with respect to keeping the rates posted. My understanding of the purpose of the act in requiring the rates to be published and posted in certain ways is so that the public themselves can examine these tariffs and find out what the rate is, and have as much responsibility in connection with knowing the rate as the railroad itself. If the railroad company is to be required, under heavy penalty, to quote the rates in writing when called upon, I do not see any necessity for the other provisions of the act which are quite burdensome and expensive, entailing this elaborate system of printing and posting tariffs.

Mr. STEVENS. As a matter of fact, you do not now post the tariffs, do you?

Mr. PIERCE. Yes, sir; we post them exactly as provided by the Interstate Commerce Commission.

Mr. STEVENS. You keep them in the office, but you do not post them.

The CHAIRMAN. Do you keep any schedules in the office now which the agent would not be required to use himself?

Mr. PIERCE. The Interstate Commerce Commission have designated certain places along our lines where we are now required to keep on file a copy of every individual and joint tariff, which is a reasonable requirement, in view of the requirements of the act that these rates shall be posted in the most convenient way to the public. They have, after taking a good deal of evidence and after hearing arguments and in view of personal experience, found that it is not practicable to keep two tariffs posted in every station where freight is received. The tariffs are very voluminous. You have not wall space in the first place to do it, and if you put them up there the public will not let them stay there.

The CHAIRMAN. I understand all that, but do you keep any tariffs now in the hands of your agents which you would not otherwise keep there?

Mr. PIERCE. Yes, sir; we keep a great many there that would not be kept there otherwise. While I do not know the exact figures, Mr. Biddle stated at a meeting a short time ago that he had had an estimate made of the expense that had been incurred in posting tariffs which in his opinion were not necessary in order to carry on the business of the company, and that it was very heavy. I do not remember what the figures were, but I know it ran up into quite a large sum of money. Even under the present regulation we keep a good many tariffs posted and on file at stations which, if it were left to the judgment and discretion of the company, would not be kept there, because they are not thought to be necessary.

Mr. TOWNSEND. How, then, would you furnish information with reference to those things when it was inquired for? Your agent would obtain it by wire from some other agent?

Mr. PIERCE. The company undertakes to do this. You understand, Mr. Townsend, that the tendency and purpose now of the railroads is to try to consolidate the tariffs as much as possible so as to have as few issues as possible. Those tariffs, as I have stated several times, are very large and they are quite expensive to get out. Probably we will have a tariff, we will say, on California fruit, to all eastern destinations, and it will name the rates to all the stations on our line, simply because there may occasionally be a stray shipment of fruit at a given station. All the stations, regardless of size, must be named, because a stray shipment of fruit may come sometimes, and it is unlawful under the act now to handle such a shipment unless you have first posted a tariff to cover it. In order to comply with the law it is necessary, at those small stations (although a shipment may never go there, and the experience has been that it has not gone there in the past), to keep posted, in accordance with the order of the commission, the tariffs prescribed by them.

We do not object to that. I want to say in this connection that I think the country at large is indebted to Mr. Clark, particularly, of the Interstate Commerce Commission, for the most careful and painstaking study that he has made of the subject of printing and posting tariffs. I think he has gone just as far as he can, under the act, to be just and fair to the railroads and to the public in respect of posting the tariffs. He has worked it out in a most admirable manner. And if the Interstate Commerce Commission were abolished to-day I believe some of the forms and methods which they have established for promulgating rates would live on as a monument to the commission forever. I think the commission has done a wonderful work in that respect. It is such a complicated system that it could not be perfected in a year, but progress is being made all the time, and I think the carriers appreciate very much what the commission has done for them in respect to helping them to work out, as far as they could, some practicable method, and at the same time with the least expense.

Mr. TOWNSEND. The interstate-commerce law, as a rule, has been very satisfactory to the railroads, has it not?

Mr. PIERCE. Well, my personal opinion is that it ought to be considered more than satisfactory. I regard it as a great benefit.

Mr. TOWNSEND. You can not see where that law ever contributed to any panic in this country, as far as the railroads are concerned, can you?

Mr. PIERCE. I am not a financier, and do not have anything to do with the financial end of it. Mr. Walker advises as to the financial end of it. I do not live in New York or on Wall street, where the panics are said to start, and do not care to make any statement about that, one way or the other.

Of course we occasionally have tilts with the Interstate Commerce Commission and do not agree sometimes with their conclusions; but on the whole I think the Interstate Commerce Commission has done wonderful work, and I for one am in favor of yielding to them the most cordial support. I am in favor of the law being strengthened wherever it ought to be strengthened. As Mr. Walker said with reference to the financial end of the bill, I am in favor of any legislation that may be enacted going as little into detail as possible, and leaving as much as possible to the discretion of the commission. The commissioners are traveling over the country constantly. They know what the interests of the shipping public demand and they know the possibility of the railroad companies practically complying with a regulation. I have absolute confidence in the commission doing the very best that can be done under the circumstances as to matters of detail.

I wish to call attention to the following language in section 9, on page 17, line 22:

And pending such hearing and the decision thereon the commission may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, etc.

This question was raised yesterday that: Suppose a schedule were suspended the night before it was to have gone into effect, and a railroad had been called upon the day before to quote in writing the rate, and the shipper had been damaged by it, and so forth, just how would that work out? I think that could be very easily taken care of by an amendment right after the word "suspend," on page 23, to the effect that—

The CHAIRMAN. What line?

Mr. PIERCE. Line 23.

The CHAIRMAN. What page?

Mr. PIERCE. Page 17.

The CHAIRMAN. You gave the wrong page.

Mr. PIERCE. I think that could be taken care of by a little amendment after the word "suspend," to this effect:

"At any time within ——— days before the schedule would have gone into effect." You can make that five days, ten days, fifteen days, or some reasonable time, so as to prevent——

The CHAIRMAN. But the difficulty now about that is a practical one. The schedule now goes into effect thirty days after it is filed.

Mr. PIERCE. Yes.

The CHAIRMAN. The parties usually will not be prepared to present a petition to have the schedule suspended until within a very few days of the expiration of that time.

Mr. PIERCE. It does not require a petition. It can be done by the commission on its own initiative without petition.



The CHAIRMAN. The commission will not act on its own initiative, on any ordinary proposition, without some hearing or some showing being made to it.

Mr. TOWNSEND. There must be a hearing.

Mr. PIERCE. They must have a hearing; but what I am trying to make clear is that in order to relieve the carrier of the penalties of other provisions of the act as to the quoting of rates, and as to the using of the schedule that has been suspended, you could say that the commission should not suspend a schedule, say, within fifteen days of the day it went into effect. In other words, if anybody was going to object to a tariff, or the commission was going to object, the objection should be taken in time so that notice could be given to the agents and to the people interested within a reasonable time before the tariff would have gone into effect.

The CHAIRMAN. Your proposition would only leave fifteen days after the tariff sheet is filed, within which the commission could——

Mr. PIERCE. You can make it ten days. I am not suggesting the time.

Mr. KENNEDY. Would it not be better to create means, with the approval of the commission, relieving the road from the penalty if the misquotation was occasioned by a suspension?

Mr. PIERCE. Yes.

Mr. KENNEDY. I understand the point to be this: That just the day or the evening before the rate goes into effect——

Mr. TOWNSEND. Was to have gone into effect.

Mr. KENNEDY. Was to have gone into effect, the Interstate Commerce Commission suspends it, and the agent quotes the rate erroneously the next day by reason of that suspension, of which he has no knowledge.

Mr. PIERCE. Yes, sir; that can be worked out either way. I do not care.

Mr. TOWNSEND. The commission never would do that.

The CHAIRMAN. What? Suspend the rate the night before it went into effect?

Mr. TOWNSEND. After it goes into effect.

The CHAIRMAN. No; but he says the night before.

Mr. KENNEDY. Suppose the rate is to go into effect to-morrow morning——

The CHAIRMAN. Involving rates to Oregon, for instance.

Mr. KENNEDY. And the commission suspends it to-night. Notice does not get to the agent out along the line somewhere, and he misquotes a rate to-morrow by reason of the lack of information on that subject. The saving clause should go in the other place.

Mr. TOWNSEND. I never thought about that.

The CHAIRMAN. Your suggestion, it seems to me, might be open to some objection for this reason. Here is a rate made, we will suppose, affecting a rate in Oregon. Shippers out there may not know just what the rates are going to be until they get hold of the tariff sheet. It may be some little time before they know, or some few days before they know. Then they must have an opportunity to consult with each other as to whether they will make objection to it.

Mr. PIERCE. My personal opinion is, Mr. Chairman, that by putting into the hands of the commission the power to suspend a tariff of this kind, you are going to create a good deal of confusion, and you are

not going to accomplish the good that you think will be accomplished. If these tariffs go into effect according to their intendment and according to their terms, everybody knows just what to expect, and I think you are taking a step in that respect that is going to result in confusion and a great deal more harm to the public than they are going to get out of it. Personally I am not in favor of investing the commission with that power.

However, that is a matter for your consideration and judgment, and if Congress sees fit to do that, I think we can undertake to stand for it and do the best that can be done under the circumstances. I do not want anybody on the committee to infer from what I have said about section 8, returning to it for a moment, that I think the provision there inflicting a penalty of \$250 for the misquotation of a rate is a wise provision. I think that is a wrong provision. I think it is imposing a penalty where none should be imposed. Rates are not purposely misquoted, and it is not possible always to be correct in the quoting of rates any more than it is in any other line of business. Nobody is ever hurt any by that. If there is any misquotation of rates it is not a very serious matter, and under this provision if anybody is hurt the man who receives the injury does not get any compensation. You are merely penalizing the carrier \$250 for doing what, in all cases, is absolutely an innocent act, without in any way providing for any compensation to the man who is actually injured. I do not see how under any provision of the act you can ever do anything else than to say that the rate as printed and established shall be the rate, without opening the door to discrimination and rebates; and I think that is one of the hardships of the act, if it is proper to so denominate it. The imposing of a fine of \$250 for what, in all cases, is an innocent act, and for what in no case repairs the wrong done to the man to whom the misquotation is given—if it is a wrong—is not wise legislation. Now, I want to say just a word with respect to section 9, the paragraph beginning with line 10:

The commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, etc.

The CHAIRMAN. You refer to page 18?

Mr. PIERCE. Yes, sir; page 18, beginning with line 10.

The purpose of that provision is to open up as many through routes as possible. When you undertake to provide by law more than one satisfactory through route, you are entering into a domain which should be left to the carriers. Whenever a shipper has one satisfactory through route, that is all he is entitled to. The railroads can not complain because one through route is opened up to him. He is entitled to that. But when you undertake to go beyond that, you get into a question of car supply; you get into a question of necessary arrangements between carriers which enable them to properly and economically arrange for the transfer and handling of through business. In other words, you are getting into the domain of the internal operations of the railroads, which neither Congress nor the Interstate Commerce Commission should be empowered to go into. There ought to be a zone within which the regulating body does not come. Whenever you have gone far enough to give the

public all necessary protection, as to rates and against discriminations, and a reasonable through route over which its property shall be transported, that is just as far as Congress should go.

To give you an illustration of what I mean, let me say this:

In the Southwest—in Arkansas, Louisiana, and Texas—there is an immense yellow-pine district. We will take, for instance, the Kansas City Southern Railroad: That road penetrates that district. It is a very large originating road as to yellow-pine lumber. It intersects the Iron Mountain Railroad at Texarkana. It intersects other railroads at Kansas City. The roads through Texarkana and all its other connections through Kansas City all lead to Chicago. If a through route is established from points on the Kansas City Southern Railroad to Chicago by all of its connections at Texarkana and Kansas City, the shipper is enabled to say over which one of those routes his shipment shall go. It certainly is not to the interest of the Kansas City Southern Railroad Company, which is bringing a large train of cars of lumber to Chicago, that it should be required to stop at Texarkana and switch out one of its cars and deliver it to the Iron Mountain road, and, when it reaches Kansas City, that it should switch out another one of those cars and deliver it to the Santa Fe, and another one to the Burlington, and another one to the Milwaukee, and another one to the Rock Island; because that entails a very large amount of expense upon the Kansas City Southern Railroad. It requires a great deal of extra service. The shipper does not get any benefit from it. It does not amount to anything to him. He is getting just as good and just as expeditious transportation of his train-load of lumber from Louisiana to Chicago by the one route designated by the Kansas City Southern or by the Interstate Commerce Commission under the old law as he can possibly have. The only reason that has been urged on you as to why there should be many through routes is not for anything connected with the transportation. It is not because the shipper is not getting satisfactory service. It is because the shipper wants to, for instance, give a carload of lumber to the Iron Mountain Railroad because the Iron Mountain Railroad says, "I will buy something from you if you will give me some of your freight."

Say, for instance, that the Kansas City Southern has a satisfactory through route with us through Kansas City to Chicago. This lumberman has piling to sell and the Alton Railroad Company want to buy some piling. They go to this man who is doing business with the Kansas City Southern Railroad and they say: "Here, you are giving all your business to the Rock Island, a competitor of ours. If you will send some of it over to us, we will buy a lot of piling from you," or bridge timbers, or something of the kind. That is the purpose, or one of the purposes, for which you are asked to open up all routes.

It may be that the Kansas City Southern Railroad can get a larger division from the Rock Island than it can get from the Alton Railroad. It may be that it can make better arrangements for the through handling of its trains. It may be that the Rock Island Railroad Company has more tonnage to deliver back to the Kansas City Southern Railroad than the Alton. It may be that for the financial interest and the mutual operating interest of the two roads, as a matter of the most economical operation, that business can be better

handled from points on the Kansas City Southern to Chicago by means of the Kansas City Southern and the Chicago, Rock Island and Pacific Railway Company than over any other route. And yet, if you permit shippers, where they have one through route with satisfactory service, to designate any old way that shipments may go, you are going into the internal affairs of the railroad companies which involve questions of car supply and economical operation, and all of those things that may interfere very much with their business.

Mr. TOWNSEND. You have not stated, of course, all the benefits that could possibly come to the shipper, have you?

Mr. PIERCE. Oh, no; no. If he can get any other benefit, Mr. Townsend, by shipping a car over the Iron Mountain or over the Alton road that he can not get over the Rock Island, then he has not got a reasonably satisfactory through route. The present law says that the Interstate Commerce Commission may establish a through route provided a satisfactory through route does not exist. If there are any benefits that the shipper can get by other routes, then it is a question for the commission to determine whether a satisfactory through route exists or not. I think the old law on that question is just as broad as it ought to be, and that when you go beyond that you get into a realm that you ought not to undertake to legislate about, or make the power or the discretion of the commission any broader than it is to-day.

Railroad companies have extensive arrangements for interchange of equipment. It may be that the Kansas City Southern can make better arrangements with the Rock Island for furnishing to it equipment for Chicago shippers than it can with other roads; and this bill would deprive it of that right to use equipment. For instance, say that there is a Rock Island car down on the Kansas City Southern road, and the shipper wants to make a shipment to Chicago, and the route is satisfactory; but for some purpose connected with his business he wants to make that shipment over the Alton road. It certainly is not fair that our cars should be diverted from us at Kansas City and turned over to the Alton Railroad to carry from Kansas City to Chicago, when we have just as good rails and just as good a route as the Alton has. You can go into the thing and work it out and study the details, and you will find where this will work great injury to the carriers and not do the shippers any good in respect to any demand or claim that they have against the carriers with respect to the transportation of their property.

I just want to say one other thing, with the indulgence of the committee, and then I will close. I will ask you to turn to page 23, section 10, which provides for making certified copies of schedules and classifications prima facie evidence. I want to ask the committee to insert this amendment at the end of section 10, between lines 7 and 8:

That certified statements of the commission as to rates applicable to particular shipments shall be treated as prima facie evidence, and received as such in courts of record.

The purpose of that is this—

The CHAIRMAN. What is that?

Mr. PIERCE. The substance of it is that certified copies of statements of the commission as to what a given rate is for a given time between given points shall be received in evidence in all courts of

record. We have occurring all the time cases where there are undercharges on shipments all over the country involving small amounts—from 50 cents up to \$50. They occur, principally and most generally, not through misquotation of rates, but through errors in calculation.

Mr. TOWNSEND. You do not mean statements of the commission; you mean orders of the commission, do you not?

Mr. PIERCE. No, sir; I mean statements. Here is what I am getting at—

The CHAIRMAN. As to the rate on file?

Mr. PIERCE. Yes, sir; as to the rate on file.

For instance, we make a shipment, we will say, of a dozen cases of eggs from some point in Arkansas to Chicago, and when it gets there the agent makes a mistake in his calculation or his addition of 50 cents, we will say. He fails to collect the proper rate by 50 cents. When the matter goes into the auditing department, and they audit the rates (as they always do), they find that the agent has failed to collect the full tariff rates by 50 cents. Under the rules of the Interstate Commerce Commission we are required to collect these undercharges. They are constantly occurring, and always will occur, because you can not prevent the mistakes which give rise to them. Nine times out of ten the shipper refuses to pay it. He says, "I won't pay it. I have settled with you; I have got my shipment; and if you have made a mistake, why, that is for you." On the other hand, the Interstate Commerce Commission have construed the law (and I think properly so) as imposing upon us the burden of collecting these amounts, even if we have to do it by suit, and even though the expense involved is many times the amount of the undercharge. The result is that we may have to sue some men in the justice of the peace court in Louisiana for 50 cents; the justice of the peace knows nothing about rates, and we have the burden placed on us of coming to Washington and getting certified copies of perhaps half a dozen tariffs, because the shipment may move under a joint rate and not a through rate. Then, when we get before the justice of the peace in Louisiana, we have a controversy as to what the rate is; and nine times out of ten we lose those cases. If the railroad overcharges a man 50 cents, he can file a complaint before the Interstate Commerce Commission, and they can find that we overcharged him, and the finding of the Commission is *prima facie* evidence upon which he can base a suit in court for the recovery of that amount if we do not pay it. On the other hand, we say that where an undercharge results from error or otherwise, which we are under a legal duty to collect, we ought to be permitted to have something from the commission that will amount to *prima facie* evidence in the case and relieve us of the great task and burden of getting certified copies of tariffs and sending freight agents and traffic experts to little county seats and justice of the peace courts in order to establish these rates. That is only a fair provision, and it is a necessary one for us to have.

The CHAIRMAN. That would require the clerical force in the Interstate Commerce Commission office to certify what the rate is?

Mr. PIERCE. What they require of us now is this: If a man has a rate on eggs, and the tariff has a hundred other commodities in it, we have got to take a copy of that tariff and send it down to the commission, and they have got to certify that that is a true copy of

the tariff. If we have such a provision as I have just read, we will prepare a statement that the rate on eggs from so-and-so to so-and-so is so much, as found in tariff number so-and-so, effective so-and-so; and all the commission has to do is to turn to that page of the tariff and certify to it—which is a much simpler proposition than to have to certify to the correctness of the whole tariff. It simplifies it very much; and I think that is a reasonable request to make.

Mr. TOWNSEND. You do not require the commission to do this; but you say that when it does make such a statement it shall be *prima facie* evidence?

Mr. PIERCE. Yes, sir; when it does make such a statement. They can always certify those tariffs for us; but we have to pay a reasonable charge over there for doing it. In some cases the charge for certifying the tariff amounts to three or four times as much as we are required under the law to collect, in addition to all the money we have to spend in witness fees and attorneys' fees; and in that respect we have quite a burden. But I believe the decision of the commission on that point is a correct interpretation of the law, because if we are permitted to let a 50-cent undercharge go it might open the door to letting a hundred-dollar undercharge go, and might lead to rebating or something else. I believe, therefore, it is not an unfair interpretation of the law. It is, at least, a safe one. But we ought to have some reasonable way of establishing what the rates are.

The CHAIRMAN. Is that all you wish to say?

Mr. PIERCE. I think it is time for me to quit, Mr. Chairman.

The CHAIRMAN. We are very much obliged to you.

(The committee thereupon adjourned until to-morrow, Friday, February 11, 1910, at 10 o'clock a. m.)





# HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

## INTERSTATE COMMERCE

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### PART XV

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WASHINGTON  
GOVERNMENT PRINTING OFFICE

1910



**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES.**

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**FREDERICK C. STEVENS, MINNESOTA.**

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## BILLS AFFECTING INTERSTATE COMMERCE.

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES,  
*Washington, D. C., Friday, February 11, 1910.*

The committee met this day at 10 o'clock a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. The committee will be in order. The special hearing this morning is on House bill 19041. We have here a committee print of the existing twenty-eight-hour law, with the insertions that would be made by the passage of this bill, for the convenience of any one wishing to consult it, and we are now prepared to hear any gentleman in favor of the bill.

### STATEMENT OF DR. WILLIAM O. STILLMAN, OF ALBANY, N. Y., PRESIDENT OF THE AMERICAN HUMANE ASSOCIATION.

Doctor STILLMAN. I will say that there are here present in favor of the bill representatives of—

The CHAIRMAN. Please give your full name to the stenographer and the name of the association you represent.

Doctor STILLMAN. My name is William O. Stillman, Albany, N. Y.; president of the American Humane Association. There appear here in favor of the bill also representatives by special request in behalf of the American Society for the Prevention of Cruelty to Animals, of New York City, and the Louisiana State Society for the Prevention of Cruelty to Animals, and representatives of various other corporations.

Mr. Chairman and gentlemen, I would say that in regard to the interest which the humane corporations have at heart in this matter, it is in the main an interest which of itself in this case coincides, I think, with the commercial interests represented by the various cattle organizations throughout the country. As I understand it, there is a unanimous request on the part of the various live-stock corporations that there shall be something done in the direction of federal regulation of the minimum speeding of stock trains.

This bill that we are appearing in behalf of this morning, No. 19041, was drawn by the Solicitor of the Department of Agriculture. It, as I understand, meets the approval of the Department of Agriculture. It has also been unanimously indorsed by the American Humane Association and by the National Wool Growers' Association, which has representatives here to be heard this morning.

I think that sometimes there is a disposition to think that the interests represented by the humane corporations is one of sentiment

merely, and that they are not always governed and controlled by sanity and good sense. But I wish to distinctly repudiate any such proposition in relation to this bill. We want only what is reasonable, fair, and just on the part of all parties interested, and particularly are we concerned in insisting that our organizations shall see that the interest of the stock itself is looked after as we believe it should be. Our corporation, the American Humane Association, while it is not a prosecuting agency itself, represent subordinate societies that have prosecuted over 36,000 cases each year of cruelties, with a very large percentage of convictions, which I think is a sufficient refutation of the charge that humanitarians are not governed by a due sense of law and practical good sense in the courts. These societies care for over a million animals. They represent a membership of over 50,000 individuals in the United States.

Now, the history of the legislation on this subject, as I understand it, is this: In 1873 the first law was passed by Congress. It was approved by General Grant on March 3, 1873, and that law provided for a general regulation of live stock in transportation. It was the first law of that kind that was passed by Congress. For a great many years it was practically inoperative. There was very little done under it. It was procured through the agency of societies for the prevention of cruelty to animals. Our second vice-president was very largely instrumental in procuring its passage at that time, and we have with us this morning a representative of the Massachusetts Society for the Prevention of Cruelty to Animals, formerly presided over by Mr. Angell, now deceased, and that society was also very active in procuring the passage of that act, and it was active in prosecuting the first case under it.

Until the year 1891 very little was done, so far as the Government was concerned. Secretary Jeremiah M. Rusk, in 1891, sent out a great many circulars to the railroads, urging compliance with the act, but that is as far as he went. In 1895 Secretary J. Sterling Morton followed his example and distributed similar notices, urging compliance with the requirements of the old law. Still there was practically nothing doing so far as activity or prosecutions on the part of the Government, in enforcing the law, was concerned. But in 1897 the present incumbent of the office of Secretary of Agriculture, Secretary James Wilson, began his present campaign for the protection of live stock, and we believe it was largely through statements presented by the American Humane Association that this was done. We felt that something should be done to protect the stock over which he has exclusive jurisdiction, and we were convinced that there was great abuse of live stock throughout the country. The Department of Agriculture, as I understand it, was of the same belief. Secretary Wilson sent out invitations to the various roads and parties that were interested in one way and another, and made the following statement in a letter which I will quote, which he sent to President Roosevelt under date of January 3, 1906. He says that—

During all this time the law was being continually violated by the carriers. Some years ago special agents were put on the road to accompany stock trains in order to detect and report violations of the law. A large number of cases were collected by these agents and transmitted to the Department of Justice for prosecution in the federal courts. On account of the difficulty of securing evidence and in some cases the unreasonable requirements of the district attor-

neys before proceeding with cases, only a small number of convictions was secured.

Some time ago I felt that live stock was not being handled in the humane manner required by law and requested the Chief of the Bureau of Animal Industry to instruct the inspectors of the bureau, particularly those inspectors stationed at points where large consignments of live stock were received, to use the utmost diligence in discovering and reporting violations of the law. As a result of these instructions nearly 2,000 cases have been reported to the department, and a number of these cases have been transmitted to the Department of Justice for prosecution, and over \$10,000 collected in penalties and costs.

Difficulties arose in connection with the enforcement of the old act, which it is not necessary, perhaps, just at this stage of my remarks to go into. The railroads had assured the department that the law would be observed in the future. At the time they discovered these 2,000 violations the Secretary said:

They knew that the department was closely watching and reporting each violation of the law as it occurred, and they were naturally making every effort at least to appear to comply with the laws, and were unloading the cattle in miserably equipped pens for food, rest, and water, and, in many cases, were even unloading them upon the open prairie, to the great detriment and damage of the cattle, and to the prejudice of the owners and shippers.

This rigid enforcement of the act of 1873, which compelled them to take the cattle off the cars wherever they might be at the expiration of twenty-eight hours, whether on the open prairie or not, very naturally led up to the act of 1906, in which there was an extension granted to the owners or shippers on condition that they made the application to the railroad companies themselves. It was not optional with the railroad companies. There was also a further exception on behalf of the sheep shippers, that they could not be compelled to put in sheep at night.

Now, Secretary Wilson further continues his remarks concerning it, and what he says is very pertinent to the position we take in connection with this matter:

It is my belief that if certain other amendments to the law, hereinafter described, shall be adopted, the time during which cattle may be confined in cars without food, rest, and water may be extended from twenty-eight hours to thirty-six hours without disadvantage to the cattle.

Then he refers to a brief that was filed by Mr. Whitehead, of the state bureau of child and animal protection in Colorado, in which he says:

The points made by Mr. Whitehead in regard to inadequate facilities for taking care of cattle which are unloaded for food, rest, and water and the brutal and inhumane manner of unloading and reloading are well taken, and furnish good reason why the law should be amended in certain particulars.

The CHAIRMAN. What are you reading from?

Doctor STILLMAN. From the letter of the Secretary of Agriculture to President Roosevelt, dated February 3, 1908, as being the official statement of the inhumanity and carelessness with which the stock was transported.

The CHAIRMAN. Where is that published?

Doctor STILLMAN. This is a copy of a private letter from Secretary Wilson to President Roosevelt, sent to me by President Roosevelt.

The CHAIRMAN. It is not official and public?

Doctor STILLMAN. It was subsequently published in some discussion of this House, and can be procured in connection with the discussion of the stock-transportation law of 1906.

The CHAIRMAN. It could not be if it was dated in 1908.

Doctor STILLMAN. No; I beg pardon. It was dated January 3, 1906.

The CHAIRMAN. We have his official letter on that.

Doctor STILLMAN. I wish to touch particularly on some of the features bearing particularly on the questions at issue. The particular point raised by him, as I read, was that—

It is my belief that if certain other amendments to the law, hereinafter described, shall be adopted, the time during which cattle may be confined in cars without food, rest, and water may be extended from twenty-eight hours to thirty-six hours without disadvantage to the cattle.

In other words, Secretary Wilson suggested at that time that there should be such an extension, but it was made conditional on the following out of other suggestions that he made at the time, among others being one that there should be a minimum speed limitation inserted, which he stated as follows:

Provided that every common carrier, other than by water, engaged in the interstate transportation of live stock, shall maintain on all stock trains an average minimum of speed of not less than 18 miles per hour, from the time when such live stock is loaded upon or into the cars and made part of the train, until the train reaches the destination or junction point for delivery to another common carrier, with a deduction for the time necessarily lost in feeding, resting, and watering, and in the unloading and reloading for those purposes, and for such other time as the stock may be delayed by storm or other accidental causes which can not be anticipated or avoided by the exercise of due diligence and foresight.

Now, when the law of 1906 was passed, it eliminated this proposition that there should be a minimum speed provision. That was eliminated, as I am informed and as I think it has been stated in various prints, at the request of the railroads, which promised compliance with the spirit of the law and good service to the stock shippers provided that was eliminated.

The CHAIRMAN. Excuse me; that is not true.

Doctor STILLMAN. Which portion do you mean was not true?

The CHAIRMAN. It could not have been eliminated, because it was never in the law.

Doctor STILLMAN. As originally drawn I believe it was in the bill.

The CHAIRMAN. As originally drawn it may have been in some bill, but it never was in the bill that was passed.

Doctor STILLMAN. It was in some bill.

The CHAIRMAN. Yes; that might be so. You see, we have all sorts of bills. If you will look at the draft furnished by the Secretary of Agriculture upon the bill that was passed, I do not think you will find any such provision as that at all in it. I am not sure about that, however.

Doctor STILLMAN. You will find in the memorandum which was prepared at the request of Senator Hansbrough in the Senate with reference to this speed regulation that the Department of Agriculture did make that particular point in item 12 of their note to Senator Hansbrough.

The CHAIRMAN. They may have done something of that kind, or said something of that kind in a letter to a Senator, but we can not pay much attention here to things of that kind.

Doctor STILLMAN. If this bill was to be passed, the Secretary considered it essential that there should be a provision regulating the minimum speed of the stock trains.

The CHAIRMAN. Have you the report which the Secretary of Agriculture made upon the bill that did pass?

Doctor STILLMAN. I think I could lay my hands on it.

The CHAIRMAN. Did he make such a recommendation as that in his report?

Doctor STILLMAN. I think he did in a series of remarks which were made by him. The point I want to make is, What has been the result of passing the 1906 law as it stands?

The CHAIRMAN. That is much more pertinent. When you come here and endeavor to discuss the reasons for certain action that was taken by the committee, with which the committee is entirely familiar, and which you could not know about because you were not here at all, you are liable to fall into error.

Doctor STILLMAN. I have the proceedings of the committee.

The CHAIRMAN. You have not the proceedings of the committee in executive session. If you have any proposition before you now to discuss, we would like to hear from you.

Doctor STILLMAN. First, the thing that I wish to quote from is former President Murdo Mackenzie, of the Live Stock Association, which represents the collective cattle interests of the country. He wrote me as follows:

The railroads have promised us time and again that they would do everything in their power to use the extension of time allowed by the recent bill in getting more cattle to the market, but instead of doing this they have used it absolutely for their own purposes. This has proved to be very damaging to us and causes a great deal of loss and cruelty to stock in transit.

President Mackenzie declared that a minimum speed limit of not less than 16 to 18 miles an hour should be adopted, and that he is satisfied, from his large experience, that the railroads can readily live up to this very moderate requirement.

Further, as bearing on this, and as showing the opinions of the live-stock interests, I would like to quote from the resolutions adopted by the National Wool Growers of the United States at their fourth annual convention, where they passed unanimously these resolutions:

Inasmuch as the shippers of live stock from certain States in the West have suffered great loss by reason of the inhuman treatment of such stock by unnecessary delay, rough treatment, and inadequate accommodations properly to feed and water the same,

*Resolved*, That we petition Congress for the enactment of a law which will compel interstate railroads to transport live stock between feeding points at a speed of not less than 15 miles an hour, including all stops.

Further than that, I would like to quote from a letter from Mr. McCabe, solicitor of the Department of Agriculture, which was addressed to the Live Stock Association, a copy of which was also sent to our association, in which he says:

I desire to emphasize this point: A fair, unbiased view of the present act in operation leads to the belief that it is defective in that it fails to provide for a minimum speed limit on stock trains.

Now, the conditions resulting from this have been that there was a large number of violations. The Department of Agriculture has made something of an investigation of the violations and has analyzed the cases which they prosecuted. Quoting again from Mr.

McCabe's statement as to the result of those analyses, in the letter just referred to, he states:

Since August, 1906, to January 1, 1908, the inspectors of the Bureau of Animal Industry of the Department of Agriculture have reported over 1,200 violations of the twenty-eight-hour law.

That is to say, this law of 1906, which the railroads assured Congress at the time it was passed would be observed, and in which the provisions were inserted mainly at their request, was violated over 1,200 times, according to the reports of the inspectors of the Bureau of Animal Industry in the Department of Agriculture. Mr. McCabe proceeds:

Between 250 and 300 cases have been tried and penalties fixed. In all, under the act of June 30, 1906, \$24,306 in penalties have been collected up to the present time. This is, of course, exclusive of costs, which will probably amount to between \$7,000 and \$8,000 in addition. There are now 900 or 1,000 cases pending in the courts.

The department has 167 cases against one of the largest of the cattle-carrying roads now awaiting trial, 122 against another, and 66 against a third. These roads are the most confirmed violators of the law.

Mr. STAFFORD. Was any defense in mitigation of the omission to comply with the law raised by the railroads in these cases?

Doctor STILLMAN. I would suggest, sir, that inasmuch as the Department of Agriculture will be represented this morning by its solicitor, that that question be taken up with him.

Mr. STEVENS. Have you any information as to what railroads those are against which so many cases are pending?

Doctor STILLMAN. I have a copy of the report of the Secretary of Agriculture giving the names of those roads. Probably it will be better for you to take it up with the solicitor of the department, who is present.

Mr. STEVENS. Very well.

Mr. KENNEDY. Has your association, as an association, ever taken up the thought of asking Congress to limit the distance that cattle might be transported on the hoof?

Doctor STILLMAN. No.

Mr. KENNEDY. Why do you not consider that?

Doctor STILLMAN. Because we believe that the minimum speed provisions, as I will show later, would get the stock to market without difficulty. I will show that later.

Mr. KENNEDY. If you had the packing houses distributed through a large territory, so that you would not have to transport the live cattle long distances, there would not be any such cruelty to animals, and would you not be getting a more regular adjustment of labor in this business? What is the necessity of carrying cattle a thousand miles to Chicago in order to be butchered there?

Doctor STILLMAN. I think, as far as the commercial aspect of the thing is concerned, you would find it difficult to split up the packing establishments in Chicago and Omaha and Kansas City and those places and do it locally. It could not be done economically to as much advantage. It would be easier for the railroads to put on faster engines and get a better speed on their trains than to have the whole packing industry changed.

Mr. KENNEDY. You are interested in the cattle industry?

Doctor STILLMAN. Yes.

Mr. KENNEDY. Then do not let me interrupt you.

The CHAIRMAN. He does not represent the cattle interests.

Mr. WANGER. Sentimentally or on the practical side? Did you understand Judge Kennedy's question when he asked you if you are interested in the cattle industry?

Doctor STILLMAN. No; not commercially, of course. We have no interest in that at all. Our interest is a sentimental interest.

Now, in further continuance of the number of prosecutions, in order to bring them up to date, showing the activity of the Department of Agriculture in enforcing the law of 1906, I will say that the report of the solicitor for 1909 makes the further statement that there were 208 cases for recovery of penalties under the twenty-eight-hour law prosecuted as a part of the work done by his bureau—

a part of which—

As he says—

together with a large number of the 828 cases undisposed of at the close of the previous year, resulted in the collection of penalties and costs amounting to \$85,029.85; 33 cases, including some that were undisposed of during the preceding year, resulted in verdicts for the defendants; 81 cases were abandoned because of lack of sufficient evidence to maintain them; and 305 cases, including those undisposed of at the close of the previous year, were pending at the close of the present year.

I only read this to show the enormous number of violations and of successful prosecutions that prove the violations, showing the necessity of something being done in regard to the law; and this bill, we claim, will be a practical cure for it. There was an enormous percentage of successful prosecutions, a very large percentage. Mr. McCabe in his report adds:

At the close of the preceding fiscal year 828 cases were pending in the courts. Of these, together with part of those reported during the present fiscal year, 617 were determined in favor of the Government and resulted in the collection of penalties to the amount of \$73,490 and costs aggregating \$11,539.85, an increase in penalties and costs over the previous year of \$11,960 and \$4,338.14, respectively. A statistical and explanatory table of these cases is inserted on page 31. Only 33 cases, or about 5 per cent, resulted adversely to the Government. Eighty-one cases were abandoned because of lack of sufficient evidence to maintain them. There were pending in the courts at the close of the present fiscal year 305 cases, a substantial part of which, it is obvious, were cases reported in previous years and remaining undisposed of on account of appeals and other dilatory causes.

Then he also goes on with other details in regard to the prosecutions being carried on at that time, which are not particularly important or relative to this discussion. But from this large number of cases you will see that a very serious condition of things has arisen. I believe it will be interesting for you to inquire into the investigations of the Department of Agriculture in regard to the nature of these violations. The reports, according to Mr. McCabe's letter, which I previously read from are to this effect:

An analysis of the cases now pending against the different railroads of the United States for alleged violations of the twenty-eight-hour law shows that, as a rule, the defendants have kept stock on the rail without water, rest, and feeding well over the statutory period. In a block of 42 cases against one road the time of confinement varied from thirty hours to fifty-seven hours, and the average confinement without water, rest, and feed was forty-two hours. Twenty-four cases are pending against another road, and in these the period of confinement varied from thirty-eight hours to forty-five hours, the average confinement without water, rest, and feed being thirty-nine hours. In a block of 22 cases against another road stocks were confined from thirty-three hours to



forty-five hours, the average confinement without water, rest, and feed being thirty-nine hours. In a group of 20 cases against another road the period of confinement varies from thirty-three hours to fifty-eight hours, the average time of confinement without water, rest, and feed being forty-four hours.

You will notice from this, gentlemen of the committee, that in these cases that were proved there was certainly very gross cruelty. There was a maximum of fifty-eight hours in these cases without food or water and an average of forty-four hours.

Mr. STAFFORD. In those instances that you have just enumerated is there anything to show the periodicity of their haulings, as to whether they were in one part of the year or whether they were stretched over the whole year?

Doctor STILLMAN. I could readily give that by referring to the report of the department, which gives them in chronological order. They could be collected and worked out. Don't you believe that Mr. McCabe ought to be able to give you that data offhand without my taking time to extract the same from the report?

Mr. STAFFORD. I thought there might be exceptional weather conditions, which would prevent the transit of trains as usual.

Mr. ADAMSON. Yes. I would be glad to know whether it is just occasionally, from an emergency, or whether the railroads are in the habit of doing that sort of thing.

Doctor STILLMAN. My impression from looking over these reports is that they are spread evenly over the year. But it is easily proven by the report of the Department of Agriculture, which gives the dates of all prosecutions and the dates of all violations.

Mr. STEVENS. It would be a great deal clearer if you would give the names of the railroads, so that we can tell ourselves as to the character of the service they have.

Doctor STILLMAN. I am simply pointing out the fault in the present law, leaving it to the Department of Agriculture to go into the details. They have all those things at their fingers' ends, and I thought it would be more satisfactory to the committee if its members could take up that feature of the discussion with the Department of Agriculture. Now, Mr. McCabe says further:

There are 122 cases pending against one road, and the average time of confinement without water, rest, and feeding in these cases was forty hours, the actual time of confinement varying from thirty-one hours to seventy-one hours without water, feed, or rest. An examination of 20 cases against another road shows that the period of confinement varied from thirty-one hours to fifty-nine hours, and that, as an average, the stock were confined for forty-five hours without water, feed, and rest. Clearly the twenty-eight-hour law is not being obeyed.

Now, gentlemen, seventy-one hours is a long time to go without water, food, or rest.

Mr. RICHARDSON. What do you mean by "cases pending?" Are they pending before the commission, or where?

Doctor STILLMAN. There were 122 cases pending for prosecution in the courts.

Mr. RICHARDSON. None of them have been tried?

Doctor STILLMAN. Yes; I think these have all been tried and settled.

Mr. RICHARDSON. Were the roads convicted and judgment rendered against them?

Doctor STILLMAN. I have just read a long list of the convictions.

Mr. RICHARDSON. I beg your pardon; I have just come in.

Doctor STILLMAN. This is an analysis of these cases.

Mr. ADAMSON. You know, Doctor, in the court-house there is a wide variance between the allegata and the probata. They allege what they please, and they prove what they can, on a trial.

Doctor STILLMAN. Yes; I was just reading this analysis. Mr. McCabe says in his letter:

An analysis of the cases now pending against the different railroads of the United States for alleged violations of the twenty-eight-hour law shows that, as a rule, the defendants have kept stock on the rail without water, rest, and feeding well over the statutory period. In a block of 42 cases against one road the time of confinement varied from thirty hours to fifty-seven hours, and the average confinement without water, rest, and feed was forty-two hours. Twenty-four cases are pending against another road, and in these the period of confinement varied from thirty-eight hours to forty-eight hours, the average confinement without water, rest, and feed being thirty-nine hours. In a block of 22 cases against another road stock were confined from thirty-three to forty-five hours, the average confinement without water, rest, and feed being thirty-nine hours.

It should be remembered, gentlemen, that the railroads are operating in violation of an act which they helped to frame.

The CHAIRMAN. They had nothing to do with the framing of it.

Doctor STILLMAN. I am reporting this from the letter of the Department of Agriculture. It is said here:

Remember, however, that the railroads are operating in violation of an act which they helped to frame.

The CHAIRMAN. That is still worse. McCabe was crazy when he wrote that. [Laughter.]

Doctor STILLMAN. Am I permitted to make any further report on this, bearing on this quotation?

The CHAIRMAN. Go ahead.

Doctor STILLMAN [reads]:

As it stands on the statute books to-day, the twenty-eight-hour law contains provisions which the railroad company themselves were instrumental in inserting. In return for the concession which provided for an extension of time to thirty-six hours at the request of the shipper, the roads promised to obey the law, and, in cases where the shipper signed such a request, to use the additional eight hours in an honest effort to get stock to destination.

We think they have not operated in good faith, and it is proved by the large number of successful prosecutions against them.

The CHAIRMAN. I do not quite see the point to all this. Here is a law which you say they are violating, and under which they are subject to severe penalties. You propose simply not to change anything, but to add another law for them to violate.

Doctor STILLMAN. Gentlemen, what we feel to be necessary is to cause them to hurry their trains to get them in under the limit.

Mr. ADAMSON. Don't you think you ought to hurry those cases?

The CHAIRMAN. Do you think they will hurry because we try to compel them to hurry?

Mr. ADAMSON. If you have a large number of cases pending you ought to hurry them. Those cases ought to cease to be pending.

Mr. RICHARDSON. You are not complaining of the law, but of the enforcement?

Doctor STILLMAN. No. They are attempting to enforce it faithfully.

Mr. RICHARDSON. You think the law is all right as it stands?

Doctor STILLMAN. No. We think there ought to be a minimum speed regulation in order to make it a satisfactory law.

The CHAIRMAN. I can not see the point of trying to pass a new law simply because the existing law is not properly enforced by the Government.

Doctor STILLMAN. I think it is being properly enforced. I think they are endeavoring to enforce it. There are a large number of cases there, but it would be made easier for the Government if there was a minimum speed limit established.

Mr. ADAMSON. Why do you not try those cases?

Doctor STILLMAN. The cases are being pushed through by the prosecuting officers very satisfactorily. What we want is a provision that will make this present law a practical working law. I will take up in a minute the effect and application it would have.

Mr. KENNEDY. They can not comply with the existing law unless they run their trains fast?

Doctor STILLMAN. They can comply with it, but they comply very unsatisfactorily.

Mr. KENNEDY. If they comply with it, will not that regulate their speed?

Doctor STILLMAN. There are a great many of them that do not comply with it.

Mr. KENNEDY. If the courts compel compliance, will not that regulate their speed?

Doctor STILLMAN. No, sir. They can stop and dump their cattle on the prairie and in insanitary pens where they are not properly fed.

The CHAIRMAN. Can they, under the existing law?

Doctor STILLMAN. It is up to the Department of Agriculture.

The CHAIRMAN. You are maligning either the law or the Department of Agriculture.

Doctor STILLMAN. What I mean is that the law has proved to be more or less a practical failure to meet the conditions.

The CHAIRMAN. I agree with you on that, but really I do not quite see the point. That is the reason I am interrupting you. The point I am trying to get you to show is how, if the penalties under the existing law do not deter the railroads, how the enacting of a new law would.

Doctor STILLMAN. A minimum speed law would have the effect of getting the cattle to destination and securing good feeding. I have also endeavored to show where there is grave carelessness on the part of the roads, where they have run their trains sometimes at a slower speed than a man would walk.

Mr. RICHARDSON. You had better go on with your statement.

Doctor STILLMAN. Doctor McCabe states further [reads]:

A very careful analysis has been made in my office of 800 cases of violations of the act now awaiting trial, with a view to determining the average rate of speed maintained by the different railroads on stock trails. In a group of 42 cases against one road the average running time for such trains varies from 4 miles an hour, a fast walk, for a haul of 364 miles, to 21 miles per hour for a haul of 977 miles, a very good rate of speed for a stock train. The average rate of speed maintained in all these cases was only 9.5 miles per hour. In a group of 24 cases against another road the rate varied from 1.8 miles per hour for a haul of 57.7 miles, to 14 miles per hour for a haul of 545 miles, the average speed maintained being 12.3 miles per hour. An examination of 22 cases against a third road shows that it maintained the exceedingly low rate of 5.4 miles per hour on an average.

I may be wrong, but I do not believe that any member of this committee would be willing to concede that that is a right or proper condition, or that cattle should be transported at any such low rate of speed as that. And it is facts like these that have induced us to ask for the passage of an amendment to the old law which will rectify these abuses under the old law.

The CHAIRMAN. Doctor, that rate of speed was maintained in these cases where there was a penalty inflicted on the railroad companies for violation of the existing law?

Doctor STILLMAN. It was for violation of the time limit, but there was no speed limit.

The CHAIRMAN. I understand. It was those cases, very likely, where, because of the slow speed of the train, they violated the existing law, and they suffered the penalty for that?

Doctor STILLMAN. Yes. We want to have it determined what is a reasonable speed for stock trains, and also eliminate an abuse which I should not have referred to, but which will be referred to by the stockmen presently.

Mr. RICHARDSON. Do you propose a limit of speed for a stock train?

Doctor STILLMAN. Yes, sir. We are proposing 16 miles an hour, which is a very low speed. Mr. Gooding tells me he has been on stock trains full of sheep which have been put on a siding while the dead freight was being pushed through to market.

Mr. RICHARDSON. What purpose could the railroad have in running at a speed of 1 mile and a fraction of a mile per hour?

Doctor STILLMAN. It is carelessness in regard to it. They regarded live stock, as one railroad man expressed it, as though they were no more than rusty rails.

The CHAIRMAN. That is not as fast as a man walking.

Doctor STILLMAN. No, sir. I have given this analysis to show the necessity for a speed limit.

Mr. KNOWLAND. Was not that caused by an unusual delay?

Doctor STILLMAN. Here are a great many cases. It is not simply an individual case or an isolated case. We have taken 42 cases involved in one, 24 in another, 28 in another, and 22 in another.

The CHAIRMAN. All of these cases were cases where there was a violation of the law?

Doctor STILLMAN. Yes.

The CHAIRMAN. The railroad companies admit that they violated the law in those cases?

Mr. ADAMSON. You spoke of 5 miles an hour as a very common rate there. It seems to me it would be very poor and inexcusable economy in the railroad management to encumber its tracks for a long time with a train going at that slow speed.

Doctor STILLMAN. Perhaps you do not bear in mind, as suggested by Mr. Scott, of the Illinois Humane Society, that a good deal of this time is waiting time on dead freight, while fruit trains are being pushed through.

Mr. ADAMSON. They have to take the siding also for passenger trains?

Doctor STILLMAN. Yes; and we believe that live stock ought to come next.

Mr. KENNEDY. In maintaining these low speeds they have to incur the penalties of existing law. Why could we not reach the same end by simply increasing the penalties of the law as it is?

**Doctor STILLMAN.** They are not pushing the stock through with sufficient rapidity. You would remedy the matter by increasing the penalties.

**Mr. KENNEDY.** The existing law requires that they must get the stock through in a limited time, and if they do not, they are subject to a penalty. If they run slowly they incur the existing penalties.

**Mr. ADAMSON.** Cattle have become more valuable than some people now, and I do not see why you do not rush them through on express trains. [Laughter.]

**Doctor STILLMAN.** The point made by Mr. Mann is a good one as to the violations of the law that we are considering. It is a case of cancer that should be cut out of a healthy individual. We are considering the causes of failure, and we should endeavor to cure this situation. We propose to supplement this law by an additional provision.

I have a series of fresh statistics that I will submit later, covering the average speed of stock trains throughout the country that are not violating the law.

**The CHAIRMAN.** Is there any way of getting that information?

**Doctor STILLMAN.** Yes. It is obtained by the use of time cards. We have made arrangement to get those.

**The CHAIRMAN.** That is very pertinent.

**Doctor STILLMAN.** Yes; in one sense that is a weak point here, and in another sense it is a very pertinent one. It shows where the evil is that we must meet.

**The CHAIRMAN.** I can not quite see why, when a law is violated, you should make another law in the same connection for another offense.

**Doctor STILLMAN.** There has been this large number of offenses, and there has been this condition of very slow speed; and then I will presently show to you that if there is a minimum-speed provision it will eventually wipe out a lot of these prosecutions. The less prosecution there is, the better.

**Mr. STEVENS.** You have not shown in all those violations what is the character of those roads. All those roads, so far as I know, may be four-track roads, or they may be two-track roads. But you have not informed us of the conditions.

**Doctor STILLMAN.** That will be explained by the Department of Agriculture. That will cover every point you wish. I have not prepared myself for that part of it.

**Mr. STEVENS.** Why could you not tell us as you go along?

**Doctor STILLMAN.** I have not prepared myself on that. I thought it was legitimate for the Department of Agriculture to give you the details of that. However, I will not detain you very long. I will give just one or two other statements in regard to these low speeds of the stock trains, together with the average throughout the country in all cases of violation, and then follow it up with other pertinent matter. It will take only a moment. There are only a few lines here [reads]:

One of the big live-stock carrying roads, now a defendant in 28 cases of violations of the act, maintained in these instances a speed of 3 miles per hour for a haul of 150 miles, and 12.8 miles per hour for a haul of 480 miles, the average speed being 10 miles per hour. One of the most persistent violators of the law is made a defendant in 122 cases. It maintained an average running time of from 1.9 miles per hour for a haul of 198.5 miles to 15.6 miles per hour for

a haul of 613.2 miles. Three other roads maintained an average of 6.4 miles per hour in 14 cases, 11 miles per hour in 15 cases, and 9.7 miles per hour in 167 cases. The average running time of stock trains in the 800 cases examined was 9.4 miles per hour.

The point I would like to make is that in the case of the roads that have been the violators of the law the average throughout the country has been only 9.4 miles per hour. That is the reason we ask that something should be done to hurry these trains up. Stick a spur in them, because it would meet the evil.

There is another point I wish to refer to here. These statistics are not brought up to date.

MR. KENNEDY. As I understand, in the short haul, where the haul is comparatively short, their average speed is much lower than where they have to go 600 miles!

DOCTOR STILLMAN. That is right.

MR. KENNEDY. That shows that they are trying to observe the law and run their trains faster where the distance is greater and trying to keep within the existing law and sidetrack the trains that go a short distance, so that evidently they are trying practically to keep within the provisions of the existing law.

DOCTOR STILLMAN. I would not say they are trying very hard to keep within the existing law, because they have still been convicted of violating it. As a matter of fact, they can have longer runs at a higher rate of speed.

MR. KENNEDY. There are some features of that law that there is no defense to except compliance. No amount of effort is a successful defense unless they comply.

DOCTOR STILLMAN. I will say that in the statement of the Solicitor of the Department of Agriculture it is stated, referring to the speed of stock trains, that present conditions are referred to, and that there is some little tendency to improvement. I had in my hand here a telegram from Solicitor McCabe, in which he says that the statements in his letter, from which I have just read, referring to the speed of stock trains, apply to present conditions. This is the telegram:

WASHINGTON, D. C., February 4, 1910.

DR. WILLIAM O. STILLMAN,  
President American Humane Association,  
Albany, N. Y.:

Your letter received. Statements in my letter referring to speed of stock trains and need of minimum speed requirement apply to present conditions. Probably some improvement. Have no additional data.

MCCABE, Solicitor.

Now, gentlemen, how would a minimum-speed law work as applied to thirty-six hours at 16 miles an hour? It would result in hauls of 576 miles during one haul. If applied to the twenty-eight-hour limit, it would result in 448 miles being hauled during one haulage.

Now, there is a very pertinent fact that comes in connection with that, and that is this, that curiously enough throughout the country the average distance to be hauled from point to point for the better shipment and care of stock in loading and unloading is 500 or 600 miles. That is very clearly set forth by Mr. Mann in the discussion I have here by him of an amendment to the law in 1906, in which he brings out, on page 8, the fact that the distance of 500 to 600 miles happens to be the actual distance between the markets and the points of shipment or reshipment, and this is a condition which can not be

changed, and should be considered as the one to which the law must apply.

Mr. WASHBURN. Page what?

Mr. WANGER. It is in House Report No. 2661, Fifty-ninth Congress, first session.

Doctor STILLMAN. Yes; House Report 2661, March 27, 1906.

Mr. KENNEDY. That was the hearing, was it not?

Doctor STILLMAN. It was a report or memorandum presented by him with regard to the bill. The distances have not changed. I could quote to you one city from another, from Kansas City to St. Joe, and from East St. Louis to Chicago, and from Chicago to Pittsburg, and Buffalo, and so on. Substantially we believe Mr. Mann was correct in his statement, that it does run from 500 to 600 miles between points where they have the conveniences for the humane shipping and unshipping of stock.

The practical point I want to make in connection with this whole matter is that a minimum speed of 16 miles an hour would result, in a thirty-six hour haulage, in a distance of 536 miles. In other words, if you have a minimum-speed law, you will enforce the carriage of your stock within the limits prescribed by the law instead of the present conditions, which produce violations of the law.

Mr. WANGER. You mean not only avoiding violations, but the necessity of intermediate feeding?

Doctor STILLMAN. Yes. As Mr. Mann has pointed out, the loading and unloading in itself is more inhumane than the extension of time; the prodding and frightening of cattle, and getting them out of pens into the mud and mire, with unsatisfactory food; and the range cattle that are alarmed and agitated and shivering, and have not the slightest disposition to feed. If you can get the unloading done in a center of industry, where the cattle can be properly fed in a large and properly constructed yard, it would be more satisfactory, and I think the sixteen-hour limit will eliminate largely the complaints that have existed under the present law.

The CHAIRMAN. Doctor, have you had this matter called to your attention—the law of 1906 providing that the extension of time could only be made upon the request of the person in whose custody the stock were, and it should be a written request, separate and apart from any printed blank or other railroad form? The idea was that the railroad companies should not be permitted themselves to present to every shipper of live stock a form and ask him to sign it before making an extension from twenty-six to thirty-eight hours, but that the shipper, on his own motion, where he thought it was necessary, would be permitted to make that request. Do you know whether, as a matter of fact, it is the custom of some of the live-stock carrying railroads to tell every shipper that they must sign a form which is presented to him by the railroad company, asking for an extension to thirty-six hours, under the threat that if he does not sign it they will end the twenty-six hours at some point where the live stock has to be unloaded without due facilities, in order to incommode the live stock and the man who has charge of it as much as possible?

Doctor STILLMAN. I thank you, Mr. Chairman, for bringing out that point, which, I believe, is notorious to anyone familiar with the subject. It has been pointed out by the Agricultural Department, and it constitutes only an additional reason for this legislation and

an additional proof to the effect that the roads are not in good faith carrying out the provisions of the law, but are seeking by every possible means to evade it.

Now, reverting to the point of speed at an average of 9.4 miles per hour, that rate of speed is maintained by the roads which are shown to have violated this law when they had only succeeded in making a haulage of 263 miles and a fraction in twenty-eight hours, or in thirty-six hours, 33 miles; and does not that show conclusively that unless there is a provision of this kind they can not get into market in time and put their cattle in pens?

Mr. RICHARDSON. You say 16 miles per hour accomplishes the haul or journey in twenty-eight hours, but is it not just as important that you should prevent that railroad which is making the number of miles it is required to make in twenty-eight hours from backing off at an unseasonable hour at night and at a place where they have no accommodations to receive the cattle? You say it is questionable whether they are acting in good faith under the present law. If we put in that provision, would it not be a punishment to the stock in the way of added inconvenience and everything else?

Doctor STILLMAN. I do not see how it would affect the stock except to get it to market more quickly.

Mr. RICHARDSON. If there were no places for them for feeding or stalling, would not the condition be worse than it is under the present law?

Doctor STILLMAN. The average distance is only 560 miles between the main points.

The CHAIRMAN. Judge, you came in late. I do not think you quite understand the bill. The proposition is not to change the hours, but the speed of the trains. It will still permit thirty-six hours, upon request of the person in charge of the stock.

Mr. RICHARDSON. My idea was that even after compliance with all of that the trains would be compelled under a strict enforcement of that requirement to stop at places where it would be uncomfortable and unsatisfactory, and everything else.

Mr. KENNEDY. Suppose that cattle are loaded within 150 miles of their destination and a train at the point of this shipment is coming along with a large train load of cattle in transitu that will have to go on rapidly toward to the feeding point or the road will be compelled to violate the law as it exists by permitting the new shipment to stand on the siding until they can get an engine. By hurrying on the other shipment they could possibly observe the existing law upon both those shipments, but if they attempt to put the cars on this train and retard its movement and make the speed limit that you have mentioned, they might fail on both shipments. Would not the passing of a speed limit, as well as a time limit, tend to embarrass rather than to help the situation?

Doctor STILLMAN. It is not the belief of those who are practically familiar with it, and some of the stockmen from the West will explain how it will work. It seems to me in the individual instances where your argument would apply there would be perhaps one out of two or three hundred cases where it would not work.

Mr. KENNEDY. I suppose that shipment would stand on the siding there for a while until they could get an engine that would be availa-



ble for hauling it, and it still might get in within the time limit by making a less rate of speed than your speed limit would fix for it, while if you retarded the other train that has been a long time in passage by holding it up with these extra cars it can not make its time limit.

DOCTOR STILLMAN. I am not an authority on that, but I think the opinions of practical men on that, and particularly the opinions of shippers who have experience, would be more valuable than mine, which would be more or less necessarily an instance of snap judgment.

It seems to me, in conclusion, gentlemen, that while the present law is largely complied with throughout the country there have been some persistent violators, and it seems to me if there is anything to be adduced from the analysis made by the Department of Agriculture as a result of prosecutions they have made, numbering many hundreds, the minimum speed is the thing necessary to complete and round out that law. That is what the stockmen and the Department of Agriculture believe, and that is what our humane societies throughout the country believe, and I do not know of anyone opposed to it, unless it would be the railroad interests. They come along, of course, with the practical question of the engines, and the movement of freight, and the time in which it can be hauled. They load their trains up so economically that they can not get up the requisite speed. We say that the economic side of the question ought not to weigh against the humane and civilized one and against the interests of the shippers who want to get their stock to market within a reasonable time. There is a tremendous shrinkage when they do not, speaking from the commercial point of view. There is a great loss that way to the shipper. And it seems to me we have the right to believe that their interests ought to be protected, and that as a civilized community we ought to consider the proper and humane treatment of the stock as well.

I have other data here, but I will not take time to quote it. I will finish in a moment. We ought to consider that most of the stock shipped is shipped for food purposes, and I think we ought to consider the fact that stock that is kept without food or water or rest for many hours, sometimes seventy-one hours, becomes fevered, becomes poisonous, develops ptomaines, as our friends the veterinarians and doctors declare, which render it unfit for food purposes. That, I believe, is a pertinent matter for you gentlemen to consider. It is, not a Utopian proposition or a dream proposition. It is a proposition well known to the sportsman and the hunter and to other people, that where an animal is harried and hurried, its flesh becomes poisonous.

It is perhaps unnecessary to go into the point as to what the effect of this law would be in the East and the West, but I would say that in the East a provision of speed like this would eliminate largely all cause of complaint, because most of the stock would be carried to market within twenty-eight hours. In some of the States, as you are already aware, there is a speed provision, so that this is not a new or experimental proposition. The present condition is an absolute disgrace to civilization, and I hope that the time will come—in answer to our friend the Judge there [Mr. Kennedy], and to the question that he proposed in the earlier part of this hearing as to subdividing and scattering the packing interests—when stock will

be killed nearer to where it is raised and shipped in cold storage, and that all shipments of stock brought up on the ranges and crowded into cars subject to unusual noises and changes of temperature and under alarming and unnatural conditions, which are cruel, will come to an end. At present we simply have to accept a part of it as necessary cruelty resulting from present conditions. We certainly have not reached that point where we can consider that question now, although it is a question of humanity.

Now, there is a proposition in this bill to create a flat rate of 16 miles an hour, or where the railroads feel that they can not conform to the provision of 16 miles an hour, which seems to be very low in view of the actual performance on many roads, they can then appeal to the Interstate Commerce Commission to grant them immunity from that, and fix a lower rate of 12 miles an hour. That should be absolute. It seems to me that is low enough in the interests of humanity and in the proper interest of the shipper.

The great difficulties in connection with this on the part of the railroads are two: First, the disposition to sidetrack live stock and rush through fast freight that is paying a better rate; and, second, the tendency for economic reasons to overload their engines, which retards their speed. They can not get up the speed with the loads they put on.

We believe that all the persons present in behalf of this measure desire to compel the roads to do what is absolutely necessary to meet these conditions. It has been proposed by one or two parties that the whole question should be referred to the Interstate Commerce Commission. We have preferred that they should merely settle any grievances arising under it, believing that was the more just method, but that the general question should be settled here; that it was perhaps fairer and more just to have Congress take up the general question of the flat-rate provision, rather than throw the whole thing on this already overworked commission and have the question come up here year after year and compel the shippers from the West to travel a long distance to come here and appear before the commission and have hearings and rehearings. We believe it is fairer and more just and more reasonable to have this matter heard by you, gentlemen, and thrashed out on the floor of both House and Senate and submitted to the Executive once for all, so that there can be a fair understanding, rather than have the thing simply brought up here year after year before the Interstate Commerce Commission. That is our position.

MR. STEVENS. Is it not a question of economics, after all? If they transport freight faster for which they make a higher charge, does that not imply that they do not at present charge enough for the transportation of live stock? Is not that the prerogative of the commission to examine?

DOCTOR STILLMAN. I entirely agree with you that it is a question that may be acted upon by the Interstate Commerce Commission, and under the provision that we have incorporated here, that where roads from physical causes can not live up to it—

MR. STEVENS. I was not inquiring about the physical causes. I was inquiring about the economic reasons as to why some roads sidetracked cattle in order to get dead freight through as an economic proposition.

Doctor STILLMAN. It seems to be a fair proposition that you should hear both sides of this question, and then you can say whether the proposition that there should be a minimum of not less than 12 miles an hour in order that our friends the dumb creatures should receive a moderate degree of fair treatment is reasonable or unreasonable. We consider that it would not be an unreasonable provision.

Mr. TOWNSEND. There would not be anything to prevent taking into consideration this provision of the law, if enacted, fixing a just and reasonable rate of speed at which stock could be carried?

Doctor STILLMAN. No, sir. I have not looked into that point particularly, but it seems to me this is a very cleverly drawn law. It was drawn up by Mr. McCabe from his long experience with the actual workings of the law.

Mr. ADAMSON. If the railroads charge more for the transportation of cattle, they might be able to carry it more satisfactorily and speedily.

Doctor STILLMAN. They charge enough now, I suppose.

Mr. KENNEDY. When they carry cattle a thousand miles there is no way of doing it humanely.

Doctor STILLMAN. We believe that a speed rate of less than 2 miles an hour is an outrage.

Mr. KENNEDY. The taking of these cattle off the trains and attempting to feed them, as you describe there, when they are nervous and frightened and agitated and have no disposition to eat, is unfortunate, and our effort in attempting in a detailed way to regulate the method of their handling is liable to contain more of mistakes than sane judgment.

Doctor STILLMAN. All that is attempted in this bill is this: To say that you must get them through at a certain rate of speed, which would naturally result in their automatically receiving and delivering the cattle at well-established places, where they have conveniences for the reception, rather than on the open prairie. It gives them a better chance for humane treatment. Further, the point you make would be largely met by the provisions of the present law, that they should be properly fed and cared for. The detail of that is left with the Agricultural Department to determine.

Mr. KENNEDY. When the cattlemen hurry their cattle to market when the market advances, the railroads can not discriminate as to whose cattle they accept or reject. They must afford equal accommodations to all. They sometimes have more cattle offered for transportation than they have engines to haul them with or yards to pen them in.

Doctor STILLMAN. They could get more engines.

Mr. KENNEDY. But how are they going to operate their business and not offend against one or the other of these regulations?

Doctor STILLMAN. I think, sir, a great many of the men who have examined this subject, cattlemen familiar with local situations, say that as nearly as they can judge a minimum speed of 12 or 16 miles an hour would be an adequate remedy, and we have offered the alternative here, according to the decisions of the Interstate Commerce Commission, which is a fair and just provision, to guard against these difficulties. The Agricultural Department, after looking over the matter very thoroughly, recommended 18 miles an hour. Some of

the roads actually transport stock at the rate of 30 miles an hour and some at the rate of 20 miles. The great abuses occur from the persistent sidetracking and the neglect of the stock; and that, naturally, we are interested in.

Mr. KENNEDY. Do you think it would be safe legislation for us to provide here that the railroads would have an option to refuse shippers to take their cattle for transportation at all?

Doctor STILLMAN. As I understand it, there is no question of car shortage considered in this. We are not studying that question. The conditions exist at present. We say, when you do put them on and take them to market, for God's sake do not leave them there suffering and dying. Why, gentlemen, our investigations showed that there were over 100,000 head of stock taken off the cars dead each year, on an average.

Mr. ADAMSON. Some other freight must be retarded if this live stock is hurried through. You must come to the point and say whether some other freight must give way.

Doctor STILLMAN. We say that this is just and in conformity with the dictates of humanity. The whole tendency of the age is toward humanity and tenderness in the treatment of all living creatures, including criminals and children and animals.

Mr. ADAMSON. Are you going to authorize that preference by a higher rate of freight to be charged, or how?

Doctor STILLMAN. Is not that a matter that is left with the Interstate Commerce Commission?

Mr. ADAMSON. What do you think about it?

Doctor STILLMAN. I say that is a matter left with the Interstate Commerce Commission, and that is not involved in this bill.

Mr. ADAMSON. It is involved in the subject. I do not know whether I am in favor of the bill or not, but I try to go into a subject when it is presented.

Mr. RICHARDSON. Have you not contended before this committee in the past two years, since the subject has been up before us, that a too great rate of speed for cattle would hurt them?

Doctor STILLMAN. Yes.

Mr. RICHARDSON. What is the maximum speed that would hurt them?

Doctor STILLMAN. In some reports that I have read the statement was made that experts were willing to concede a maximum of 30 miles an hour. Mr. Chairman, you will correct me if I am wrong about this, because you carry all these things in your head. Thirty miles an hour would be reasonable if there is a fair roadbed. At 60 miles an hour you would throw the cattle down and they would get injured. You know you can push a good horse up to 10 or 12 miles an hour, and certainly a minimum of 12 miles an hour in the transportation of live stock is not unfair to ask of the roads.

Mr. KENNEDY. But a speed of 16 miles on the average means a much higher rate of speed than 30 miles an hour midway between stations.

Mr. STEVENS. And on a single-track road, decidedly.

Mr. KENNEDY. Take a maximum point.

Doctor STILLMAN. I am familiar with the point you are raising. I left that to the stockmen, who are familiar with that phase of the subject.

Mr. KENNEDY. They can not run 16 miles an hour on the average unless they run more than 30 miles midway between stations. You must allow for stops, you know.

Doctor STILLMAN. Would you think that allowing 50 per cent of the time on sidetracks would be a liberal percentage?

Mr. KENNEDY. No. For miles a train does not acquire a speed of 16 miles an hour, and then it must increase its speed and run away beyond 16 miles an hour, perhaps beyond 30 miles an hour, at the highest speed, in order to maintain an average of 16 miles.

Mr. KNOWLAND. That would be different on single and double tracks, would it not?

Doctor STILLMAN. Yes.

Mr. KNOWLAND. On the long hauls in the West they are mostly single tracks, are they not?

Doctor STILLMAN. Yes.

The CHAIRMAN. I do not want to interrupt you, Doctor, but on these practical questions I think these other gentlemen could answer. Time is running.

Doctor STILLMAN. Yes, Mr. Chairman; I am presenting the subject as we understand it, after careful study for several years; and as to statements of facts, we will ask you to extract them from the cattlemen and the representatives of the Department of Agriculture, who can present them perhaps more satisfactorily and circumstantially than we can do, because our defense would be to verify everything and make it satisfactorily conclusive to ourselves.

#### STATEMENT OF MR. F. W. GOODING, OF SHOSHONE, IDAHO, PRESIDENT OF THE NATIONAL WOOL GROWERS' ASSOCIATION.

Mr. GOODING. Mr. Chairman and gentlemen, I am going to say but little on this subject this morning, but I am going to ask you to accept the resolutions that have been drawn up by the National Wool Growers' Association and also by the American National Live Stock Association at conventions held, one at Ogden City, Utah, and the other at Denver, Colo., this year.

I want to say to you that the live stock association and the live stock men at the present time throughout the western country, where there has been a large amount of stock transported to eastern markets, are unanimous in asking that we get a minimum speed bill passed here for the benefit of those shippers. I want to say to you that there are millions of dollars lost annually by the methods pursued by railroads in shipping their live stock to destination. The shrinkages are great. Two pounds, 3 or 4 pounds, lost in a sheep in transporting that sheep from the West to market, and perhaps 10 or 20 or 30 or 40 pounds on a steer when transported to market, means a great deal of money if you figure it up in the aggregate. It runs into the millions.

Not only that, but, as stated by Doctor Stillman, it affects the meat, its quality and healthfulness. I am living in Idaho and shipping over the Oregon Short Line and the Union Pacific Railroad, and those roads are practically under one management. I can speak more particularly of that one than of any others. I have ridden on a stock train many a time myself, and I know whereof I speak when I say we used to come from our country down to Chicago in eight days, whereas the best they can do at the present time is ten or twelve

days. There is something wrong, evidently. We used to make better time than we do now. In the movement of stock from our western country down to the yards in Omaha the railroads have no competition, but at Omaha, where there is competition, our stock in transported from that point to Chicago at the rate of 20 miles, and yet on the Union Pacific we drag on at 8 or 10 miles an hour.

Mr. KNOWLAND. Are they double tracks from Omaha eastward?

Mr. GOODING. No, sir. The Rock Island and Burlington and Milwaukee and other roads are single-track roads; yet they all practically make about the same time.

Mr. STAFFORD. To what do you ascribe the lengthening of time that you speak of?

Mr. GOODING. We will have to admit that the railroads have more business West, but we do not like the proposition of the Union Pacific road running fruit trains by a live-stock train. Why they do it I do not know; but they do do it.

Mr. STEVENS. Now, I have before me the last report of the Solicitor of the Department of Agriculture, in which he gives the details of the prosecution of violations of the law. You are complaining of the Union Pacific, which is not giving you good service?

Mr. GOODING. Yes. That is the road I ship my stuff over.

Mr. STEVENS. This report says that there are 12 prosecutions against them. You claim that from Omaha east the conditions are better?

Mr. GOODING. Yes.

Mr. STEVENS. The Milwaukee and St. Paul is one of the lines that compete?

Mr. GOODING. Yes.

Mr. STEVENS. They have three times as many prosecutions as the Union Pacific. The Chicago and Northwestern is another?

Mr. GOODING. Yes.

Mr. STEVENS. They have 30 or 40. The Rock Island and Pacific is another?

Mr. GOODING. Do they come from Omaha to Chicago? Some of those roads run from there up. Those prosecutions may be on the lines farther out.

Mr. STEVENS. The Milwaukee and St. Paul does not reach to the coast. The Rock Island and Pacific, and the Missouri and Pacific, and the Milwaukee and St. Paul—all those run between Omaha and Chicago?

Mr. GOODING. Yes, sir.

Mr. STEVENS. All those roads have more prosecutions against them than the Union Pacific. How do you explain that?

Mr. GOODING. So far as my observation is concerned, I get much better service on those roads than I do on the Union Pacific.

Mr. ADAMSON. Don't you think the complaints against them have originated on parts of their lines where they do not have competition?

Mr. GOODING. That may be.

Mr. STAFFORD. In different parts of their lines, say out in the Dakotas, they have the same character of service that they have in Wisconsin and Illinois.

Mr. GOODING. Where there is competition there is better service. But out in our country, where they can pick up the stock and have a

"inch" on it, they use it as they please. My particular point is, when the railroads can run fruit trains so fast; why can they not run the stock trains equally fast? Can there be more loss in the fruit in a train than there is in the live stock? I say no. There must be a greater loss in the case of the stock, naturally. It affects the meat that the whole country has got to consume.

Mr. Mann knows that I have been before this committee before, and that I have made statements here; and I want to say now, gentlemen, that I consider this one of the most important bills that is to-day before Congress for the benefit of the stock growers and the people at large in this country.

The CHAIRMAN. Suppose the passage of this bill should increase the rate on live stock from 25 to 33 per cent, would you then think it so important? [Laughter.]

Mr. GOODING. I have offered to pay the railroad company an increased charge if they would give me a guaranteed run on the railroad. I would be willing to do that, because I realize the fact that I would be ahead. I am talking about this matter, gentlemen, from the financial point of view. I offered to pay the Oregon Short Line \$50 a car more.

The CHAIRMAN. Are you willing to answer that question as to whether the live stock interests would be willing to pay 25 per cent more in freight in order to have the transportation of their live stock expedited?

Mr. GOODING. I would not want to answer that question for the whole of the live-stock people, because many of them might object, and many of them feel that they are paying more to-day than they should; but I would be willing to do it myself, because I realize that I can more than make up the difference from the fact that I would get a better price for my stock.

The CHAIRMAN. You think it would be advantageous to have the rate of live stock increased and the time of transportation decreased proportionately?

Mr. GOODING. I think the shippers would make money by that.

The CHAIRMAN. Are you in favor of that proposition yourself?

Mr. GOODING. It all depends on how much the increase would be. [Laughter.] I do not want to give the railroads all I make. I want a little left.

The CHAIRMAN. Say an increase from 25 per cent to 33.

Mr. GOODING. Well, an increase of 25 per cent would be fifty or fifty-two or fifty-three dollars. I have offered to do that; I have offered to give them \$50 a car more to get my stock down to market.

The CHAIRMAN. Was that on particular shipments?

Mr. GOODING. It was my own shipments. I was trying to get something for my own special benefit.

The CHAIRMAN. I say, was that a particular shipment?

Mr. GOODING. No; I am willing to do it at all times.

The CHAIRMAN. I am not trying to commit your association, because I have individual views on that subject, and perhaps the association has not spoken on it.

Mr. KENNEDY. Don't you think you have got this whole problem wrong? Would it not be economy to limit the distance that live stock can be shipped on the hoof? It is essentially cruel and bad economy to carry live stock for ten days on the trains, even under the best conditions.

Mr. GOODING. It would be if we could get the market for it. But who is going to supply the market? The grower is not able to supply the market.

Mr. KENNEDY. The live-stock associations are great associations in this country.

Mr. GOODING. They are not large enough for that. Each man is striking for individual business. As an organization they are strong. But they could not go into the business. It takes millions and millions of dollars. You will realize that if the packers in the great centers are spending millions on their packing plants it would be impossible for the stock raisers individually to go into that kind of a proposition.

Mr. KENNEDY. It would not require a great deal of capital to slaughter the cattle out in your country and send them to the East in refrigerator cars.

Mr. GOODING. There is no one that has had sufficient capital and has been willing to try it, and I would not be willing to undertake to buck the packers of Kansas City and Chicago on the hoof. [Laughter.]

Mr. KENNEDY. If the facts are as you contend, it would be a healthy condition that the public, perhaps, ought to insist upon. Has there ever been a discussion by your association of the matter of correcting the cruelty to animals in this way?

Mr. GOODING. Our association discussed the matter from a financial point of view. Of course, the more humanely they handle their stock the better prices they receive and the more money they realize from that stock. That is natural.

Mr. STEVENS. Do you know the comparative rates of the fruit you complain about and the live-stock rates? Have you investigated that?

Mr. GOODING. No, sir; I have not investigated, but I know it is done, and I have seen them on the railroads.

Mr. STEVENS. You have not investigated?

Mr. GOODING. No.

Mr. TOWNSEND. Has not the commission decided, when these stock rates come up, that a certain amount is reasonable?

Mr. GOODING. Yes, sir.

Mr. TOWNSEND. You are simply asking certain restrictions to be made which can be used and taken into consideration when the rate is fixed?

Mr. GOODING. Yes, sir.

Mr. WANGER. Speaking of Chicago, do you go through Omaha?

Mr. GOODING. Yes, sir.

Mr. WANGER. How far is it from your loading point to Omaha?

Mr. GOODING. About 1,300 miles.

Mr. WANGER. How long does it take?

Mr. GOODING. I have not that just figured out, but we consume all the time we are on the road with the exception of about twenty-two or twenty-three hours in going from Omaha to Chicago. That is all it takes us. It is about 500 miles, and it takes us that time; sometimes less, and sometimes more. I have gone down there in nineteen hours.

Mr. WANGER. Then it would take nine more days to make the 1,500 miles?



Mr. GOODING. Yes. You see it would take longer if you fed the stock. Now, as to the question that was asked of Doctor Stillman, if the present law was not adequate to force this stock to market, it does not make any difference as to the thirty-five hours what your speed is. It does not seem to make any difference to the railroad whether they make 200 miles in thirty-six hours or whether they make it in twenty-eight hours. It does not help us get our stuff to market at all.

The CHAIRMAN. You do not ask it?

Mr. GOODING. We nearly all of us ask it.

The CHAIRMAN. Why?

Mr. GOODING. Because we want to get to a certain place to feed. They may unload us at Rawlins, which is not as good a place to feed as Laramie, 120 or 130 miles farther east.

The CHAIRMAN. Would you be satisfied with a less cost if it would eventually get you to a farther distance?

Mr. GOODING. I do not want to complain, but I want to say that they do not consider your live stock as a train of live stock alone. They just peck along in that thirty-six hours, and if they can not see how they can unload you at Laramie, they say, "You can not unload, and you must unload at Rawlins." The shipper has nothing to say about it. The railroads tell him what he must do, and he must do it.

The CHAIRMAN. Do the railroads now present you a printed form to sign?

Mr. GOODING. No, sir. They will give it to you when you ask for it and want to use it. There is no one of our men that I know of where they have insisted upon our signing. I usually tell my men to go and sign, because I want to give them the time necessary to get to the best place to feed and water.

The CHAIRMAN. Is the time now longer between your place and Chicago than it was before the limit was extended to thirty-six hours?

Mr. GOODING. It has not lessened any, Mr. Mann. I do not know that it is much different. Ten or twelve years ago, along in there, I was shipping live stock at that time, and of course the roads were not so congested with business, and we used to get over the road in about two days' less time on the average than we do now. They used to land the train from the West about forty hours earlier than now. That has been my experience.

I would like to offer these resolutions, to be printed in the record.

The CHAIRMAN. Give them to the stenographer.

(Following are the resolutions referred to:)

*Resolutions adopted by the National Woolgrowers' Association at its forty-sixth annual convention, Ogden City, Utah, January 8, 1910.*

#### RAILROAD RATES AND TRANSPORTATION.

Because of the serious losses sustained by those engaged in the live-stock industry in the transportation of stock to market, due to the slow movement of railroad trains and long and unnecessary delays, which we attribute to the tonnage system in vogue, which fact we have repeatedly called to the attention of the railroad officials without obtaining complete relief, and inasmuch as this condition obtains on practically every railroad system in the United States, we deem it a proper subject for the consideration of the National Woolgrowers' Association.

We recommend that this association send a committee to Washington which shall endeavor to have a speed minimum clause added to the present federal law (known as the "thirty-six-hour limit") which governs the shipment of live stock and provides for their humane treatment.

We recommend that our committee be instructed to cooperate with the American Humane Association in securing the enactment of the "Sixteen-mile speed limit" legislation recommended by the association.

*Resolutions adopted by the American National Live Stock Association, Denver, Colo., January 23, 1908.*

*Be it resolved by the American National Live Stock Association in annual convention assembled in Denver, Colo., January 21, 22, 23, 1908, That the Congress of the United States be, and the same is hereby memorialized to enact a law to provide for a minimum speed limit for the transportation of live stock which minimum speed limit for stock trains shall not be less than 20 miles per hour from the place of loading to the first division point of the road and between division points and the place of destination, with such exceptions as should be made over mountain divisions and under other exceptional cases, as to make the same reasonable, as circumstances may require; and*

*That the time limit for stoppage of live stock at division points shall not exceed a reasonable time. That the law fix appropriate penalties against railroad companies for failing to observe the said speed limit in the transportation of live stock, for failure to observe such rules as may be prescribed by the commission, subject to exceptions as are fair and reasonable for accidents and causes beyond the reasonable foresight and control of railroad companies.*

*Provided, That the burden shall be on the railroad company to prove the facts relative to any accident preventing the observance of said mentioned speed limit; and be it further*

*Resolved, That the Interstate Commerce Commission be vested with the power to prescribe the speed limit so as to make it applicable to the various circumstances and conditions of transportation.*

*Resolutions adopted by the American National Live Stock Association, Denver, Colo., January 13, 1910.*

*Resolved by the American National Live Stock Association in convention assembled at Denver, Colo., January 13, 1910, That in order to secure better service from the railroads in the transportation of live stock, we recommend to Congress the enactment of a law to give to the Interstate Commerce Commission the power to prescribe a minimum speed limit for stock trains to suit the conditions in different localities.*

MR. STEVENS. In connection with your statement, Mr. Gooding, to the effect that you got better service east of Omaha than west, the record of the Solicitor of the Department of Agriculture shows that on the Union Pacific last year in the district of Nebraska and Utah there were 11 prosecutions for the violation of the twenty-eight-hour law, and that in the districts between Omaha and Chicago, where there has been competition, in those districts alone there were 98 prosecutions, showing that there were nine times as many violations of the law east of Omaha, where there was competition, than there were west of Omaha, where there was no competition. How do you explain that?

MR. GOODING. I can not explain that. I am speaking merely of my own experience. I say I get better service east of Omaha than west of Omaha. That is my own experience. The reason why I could not talk on this subject fully is that I have not any detailed information, but if necessary I think we could get up a bunch of statistics that would enlighten you people a good deal. Mr. Mann knows that this subject has been thrashed out ever since 1906, and unless we get something on this line, I want to say to you, gentlemen, that you are going to have this thing before you every winter, be-

cause our men are losing too much money. It is of vital interest to the stock-raising industry of the country.

The CHAIRMAN. Mr. Gooding, we do not take that as a threat. We are so pleased with the prospect of having you here every winter that we do not feel alarmed. [Laughter.]

Mr. STAFFORD. You say that your stock cars are a composite or component part of a freight train?

Mr. GOODING. We think we have a train when we have 20 or 30 cars, but 16 or 20 more cars are added to it, and we then become only part of a freight train.

Mr. STAFFORD. Is the train of such a character that it could be likened to the fast fruit train that you say takes precedence?

Mr. GOODING. The 25 or 30 cars make a pretty good train. Every railroad handles its cars on the tonnage system, and the more cars they can handle in one train with one engine the better they are satisfied. It does not make much difference as to the time. They have to haul a less number of cars under a time limit, but if you pass such a bill as we are asking for, I will say to you that 35 or 40 cars are about all the Union Pacific can haul in a train.

Mr. STAFFORD. The large majority of the freight of this train is stock, and the mixed freight is only a part?

Mr. GOODING. Yes, sir.

Mr. KNOWLAND. According to your view the chief cause of delay is the transportation of fruit?

Mr. GOODING. No. I would not say that. It just so happens that the largest shipments from the western country of live stock come about the time of the largest shipments of fruit, in July and August.

Mr. KNOWLAND. Of course fruit is perishable, and it is just as important to the health of the people that the fruit should be brought into market quickly as the cattle?

Mr. GOODING. Yes; but why should fruit take the precedence? That is what we object to.

The CHAIRMAN. Well, gentlemen, we are very much obliged to you. Judge Richardson has some ladies who would like to be heard, I understand.

#### STATEMENT OF MRS. LAWRENCE JOHNSON, OF LUSK, WYO.

Mrs. JOHNSON. Mr. Chairman and gentlemen, there is one thing I would say, and that is that in shipping freight over the northwestern roads, both cattle and sheep, we have found out that a threat to the Burlington would often put us in Omaha a great many hours earlier than we would have got in if we had not made the threat. Our ranch is situated halfway between the Northwestern and the Burlington, and many times we have used that argument to induce them to get our live stock into the market a little earlier.

The CHAIRMAN. What kind of a threat do you mean?

Mrs. JOHNSON. By simply telling them that we will not ship our stock over their road unless they get it in in a reasonable time. That is all I have to say. [Laughter.]

The CHAIRMAN. We thank you.

Mrs. JOHNSON. I thank you very much.

The CHAIRMAN. Without objection, we will proceed with this hearing this afternoon at 2 o'clock.

**Mr. S. P. NEALE.** Mr. Chairman, are many more to be heard in favor of the bill?

**Mr. WANGER.** Two more items.

**Mr. NEALE.** There are a number of railroad witnesses here. Will they be accorded a hearing this afternoon?

**The CHAIRMAN.** I presume so.

**Doctor STILLMAN.** Mr. Chairman, I would simply like to say that **Mr. Guy Richardson**, among others, has appeared in behalf of the bill—**Mr. Guy Richardson**, of the Massachusetts Society for the Prevention of Cruelty to Animals.

**The CHAIRMAN.** We will not put in the names of people unless they are heard.

**Doctor STILLMAN.** I thought it was customary to have them put in.

**The CHAIRMAN.** It is not the custom. We would have no objection in this case, but there are so many people who might avail of that precedent that we do not like to inaugurate it. You had better have them here this afternoon so that they can be heard.

(Thereupon, at 11.40 o'clock a. m., a recess was taken until 2 o'clock p. m.)

#### AFTER RECESS.

The committee met at 2 o'clock p. m., pursuant to the taking of recess.

**The CHAIRMAN.** You may proceed, gentlemen.

#### STATEMENT OF PETER G. JOHNSTON, REPRESENTING THE NATIONAL WOOL GROWERS' ASSOCIATION.

**Mr. JOHNSTON.** My name is Peter G. Johnston, of Blackford, Idaho, representing the National Wool Growers' Association. I have addressed the committee twice before on the same subject in regard to which I now appear before you. This is the third endeavor to have enacted into law some definite speed minimum that shall govern transportation of live stock.

It will be remembered that in 1906 a bill was introduced which contemplated this, but the speed minimum clause was eliminated. The passage of the amendment to the law governing humane treatment of live stock which was approved June 29, 1906, did not prove satisfactory. The railroads promised that if the time was extended from twenty-eight to thirty-six hours, live stock would be by them hauled at a reasonable rate of speed, and that they would obey the law as it then stood upon the statute books of the United States.

Time and experience, however, have proven the failure of their promises to keep within and live up to the requirements of the law, as is substantiated by the numerous prosecutions entered against the railroads by the Department of Agriculture.

I desire to state my personal experience, as a shipper, in two instances: In October, 1907, about the 1st, if I remember correctly, I loaded 20 cars of sheep at St. Anthony, Idaho, en route to Chicago. I did not receive the power to move the cars until late in the day, although it had been promised me early in the morning. After loading, we started out at night, causing the loss of about 30 sheep, because of the fact that in the nighttime and when it is dark it is almost impossible to keep the sheep on their feet or to see those that

are down. You will understand that when sheep first start out on a railroad they are unaccustomed to the motion of the train; but if it is daylight, during a distance of a hundred miles or so they can be sufficiently trained so that if they are not overcrowded in the car they will retain their footing when they desire so to do and will occasionally rest, rising up and allowing the others to rest. But in starting in the nighttime a loss is almost sure to occur, if they are loaded even reasonably—I mean with reference to their being crowded—because assistance can not be given them, and in their fright and terror they crowd to one end or the other of the car; this is sometimes occasioned, too, by the jerking of the train.

Because of delay, we did not reach Montpelier until 2 o'clock the next day, thus consuming nineteen hours in a journey of 186 miles. Another delay of three hours occurred in unloading at Montpelier, which delay made it 5 o'clock before the sheep were unloaded. Then, because of darkness, we were obliged to keep them in the corrals all night. Twenty-two hours were consumed in going 186 miles, or rather twenty-two hours were consumed before the sheep could be unloaded, the average being  $8\frac{1}{2}$  miles per hour for the first part of the run.

We loaded up the next day and went a distance of 164 miles in twenty-six hours; the average per hour was  $6\frac{1}{2}$  miles, and we were unloaded at Rawlins, despite our protests to the contrary and in spite of the fact that there was ample time, with this release being signed, that would have permitted us to have reached Laramie, Wyo. Rawlins was unfitted then and is now for the feeding of the lambs, of which the 4,000 sheep consisted.

Mr. STEVENS. Who denied your request?

Mr. JOHNSTON. The railroad.

Mr. STEVENS. The railroad can not do it; some official of the railroad denied your request.

Mr. JOHNSTON. Well, I am unable to remember just what his title would be.

Mr. STEVENS. Whom would you address, the conductor?

Mr. JOHNSTON. The yardmaster is one of the parties that I saw, and he said, "You must unload." I told him that we had ample time, by signing a release, to reach Rawlins. "It does not make any difference, sir; my orders are you shall be unloaded," and we were unloaded. I am not positive as to the official title of the officer that I saw, but I believe it was the yardmaster.

Mr. STAFFORD. What was the occasion of the slow speed that you suffered in the case you instance in this shipment?

Mr. JOHNSTON. The train could not pull the load that was attached to it; that was one of the reasons. Another reason was that other freight had a right of way over us.

Mr. STAFFORD. How much of the time that you stated was engaged in travel, and how much on sidings, in that twenty-two hours' run?

Mr. JOHNSTON. My answer would be approximate. According to the best of my recollection, I would say that we were about seven hours on sidings, waiting.

Mr. STAFFORD. Was that at terminals, or in the interior?

Mr. JOHNSTON. No; at terminal and other points.

Mr. STEVENS. What was the character of the freight that went by you while you were on sidings?

Mr. JOHNSTON. Manifest fruit, fast California fruit.

Mr. STAFFORD. They were through trains that passed you?

Mr. JOHNSTON. I do not know whether they were any more necessarily through trains than my live stock.

Mr. STAFFORD. Leaving out the question of necessity, were they through trains or not?

Mr. JOHNSTON. I am not aware as to their character. I know they passed us.

Mr. STAFFORD. In the train of which your stock comprised a part, was it a through train or was it composed in part of some local freight?

The CHAIRMAN. You do not carry live stock in trains with local freight cars.

Mr. STAFFORD. I am trying to find out whether the train was engaged in picking up cars en route, or whether it was a through train.

Mr. JOHNSTON. It was not picking up cars at sidings. As to the balance of the freight on the train, I remember particularly that there was a car of rails on the train, to which I make particular reference, and there was other dead freight that it seemed to me could have very well waited rather than to permit the stock to perish from hunger and thirst, as they had to do in this particular instance. The unloading of them at Rawlins did not in any particular live up to the purpose of the law now governing shipment as regards the humanity pertaining to it, because the water there was turned out in troughs. Those lambs had never seen a trough before, and I am willing to make an assertion on my oath that not 200 of them attempted to touch it. They were fed dry hay, but they stood huddled together and did not touch the hay. As a matter of fact, they never saw it before or anything like unto it. At no time is it humane to unload lambs at that station. I tried to make that apparent to the railroad official, but he had his orders, and had to obey them.

The CHAIRMAN. Suppose you had run on to Laramie. How about drink and feed for these lambs there?

Mr. JOHNSTON. I have some data on that that I will read to you.

Mr. STAFFORD. In this shipment of twenty-two hours did that train—and I assume you accompanied it—

Mr. JOHNSTON. I did.

Mr. STAFFORD. Did that train gather up any cattle cars en route or any other character of cars?

Mr. JOHNSTON. I merely give this as a recollection: In starting from Montpelier the train consisted of about 58 cars. The engine could barely pull it up to Granger. After we got to Granger more freight was put on, and after reaching Green River more freight still was put on, until it barely crept along. At no time, in my recollection, where there was the slightest uphill grade was it not so that I could easily have gotten off and partly walked and partly run alongside the train and taken the train again, without any danger whatever. It was moving at the rate of 4 or 5 miles and even as slow as 3 miles per hour.

We then loaded the sheep, took them to Laramie, a distance of 117 miles, and unloaded them there. Laramie is a place splendidly fitted for the care of sheep. A beautiful, clear stream of water passes the stock yards, with a solid pebble bottom, and shallow, into which the sheep can wade and drink to their hearts' content. Pasturage of

western grasses such as these lambs were used to is available, and that feeding point is in every way eminently fitted for the care of this kind of live stock.

But the law as it now stands is defective in the fact that it is not our option to reach it. The matter is absolutely in the hands of the railroads, and they dictate to us whether or no we shall reach it. No certainty whatever is given to the shipper and the producer as to whether or not he shall reach any given point at any certain time in the day or night, for that matter.

I cite these cases to show the very severe loss of flesh and the torture that these sheep endured before reaching a satisfactory place to feed them, because of the railroad's violation of the spirit and intent of the law.

On October 2, 1903, I agreed with the railroad company at St. Anthony and received a dispatch to the effect that the power and cars would be there at 7.30 on the morning of the 3d. to load our sheep, a shipment consisting of 20 cars. The power reached there about 8 o'clock, but the crew had worked sixteen hours, and consequently had to tie up for rest. Let me explain. The crew had then worked sixteen hours, and the railroad must certainly have been cognizant of that fact in sending them up there, and they knew there was no other power with which I could load those sheep. They also knew, if they knew anything at all, about what circumstances these sheep were in at St. Anthony, surrounded by an agricultural district for miles and miles, where it was impossible for me to turn them out upon the ranges or obtain feed for the sheep. So that the necessary tie-up of eight hours had to occur, and the dispatcher knew that just as well after it did occur as prior to the occurrence. We could not turn the sheep out to feed, as I have already stated, and we had to wait until 4 o'clock; then loaded the sheep and finished in the dark.

On this trip, while trying to be governed by the experience of the past and loading lighter, 270 to the car, we lost 50 sheep between there and Pocatello, a distance of 87 miles. And such losses will always occur, as I said before, even if they are reasonably loaded. At the first jolt and jar of the cars the animals are so terrified that they huddle together, either in this corner or in that, with the result, if you can not see them so as to be able to help them and assist them to regain their footing, they perish; and as fine meat as was ever shipped out of the Rocky Mountains was shipped down in that train of sheep.

I have never had anything in my shipping experience that so annoyed my feelings; to think that a law existed in these United States—or rather for the lack of the existence of a law to govern in some degree the humane movement of live stock there was an utter waste from which no one derived any benefit whatever.

The CHAIRMAN. Does that contribute to the high price of live stock?

Mr. JOHNSTON. Well, as the ratio is of 50 to 4,000, so did it contribute, Mr. Chairman, to the high price of lambs.

On our arrival at Pocatello we had two bad-order cars. We had to transfer one by going to the stock yard and loading the sheep into another car. The other the railroad employees patched up as best they could.

I wish to say that both of those cars were in such a condition that the most ordinary mechanic acquainted with the movement of railroad

trains could see that they were not fit to have been included in such a shipment. I know that to be a fact, because I myself personally examined the car at St. Anthony prior to its starting, and called it to the attention of the agent. He said, "I can not do anything about it. We have no other car here. I would be very glad to replace it, but these are all the cars we have on hand." I cite this to show the carelessness of the railroad in this matter. An ordinary mechanic would have discovered in a moment by careful examination that that car would not hold; that the bolts were in such a condition that they were bound to pull out under a pressure of 30 or 40 cars.

We did not get away from Pocatello until 4 a. m., and we did not reach Montpelier until 1 p. m. Another delay occurred in unloading and thus deprived the sheep for another night of necessary food and water. We finished unloading at 7.30, and the sheep had to lay there all night. They might just as well have unloaded along the line, so far as the benefits of unloading were concerned. They would have gotten just as much feed and almost as much rest by going on in transit in an endeavor to reach another point that would be just as suitable, but the law intervenes. The time which governs the producer, but does not govern the common carrier—

The CHAIRMAN. I do not quite understand how the law intervenes there.

Mr. JOHNSTON. The necessity for unloading.

The CHAIRMAN. I know; but on the statement you made, what was the time from that last place?

Mr. JOHNSTON. I see what is in your mind, and I will explain. I did not wish to unload at Green River or Rawlins. They are very much worse than Montpelier. So it was a choice between two evils. Knowing it was impossible to reach Laramie, I unloaded at Montpelier and took that choice. What we need more than anything else now is some certainty with reference to our movements. If it is so that the railroad is obligated to move our stock at a reasonable speed, and that is definitely asserted in the law, we can calculate with some degree of certainty what can be done. We can also load up and depend upon arriving at some place.

These two cases are only two out of hundreds. The loss is sustained in the shrinkage of our live stock, from which no one is the beneficiary. I wish to say that the West suffers a loss of millions in this manner. When it comes to a principle of conservation, here is a grand opportunity to conserve that which we already have, and not only that, but for years it has been apparent to me—and I have been in this business twenty-five years, and I know a little about it; and I have slaughtered those sheep out West and shipped out of the identical flock that I have shipped to the East, and I know this—that after such torturous treatment as this the meat is brought into the eastern market and slaughtered, and the sale of it in that condition is an absolute injustice to the people that have to consume it. It is an injustice to their health. The meat is fevered. As you very well know, thirst produces that effect, and famine and hunger naturally emaciate the animals, with the result that the meat must be offered to the millions of people on the east side of the Mississippi River that consume it in a condition that is certainly detrimental as against what it would be if it were but shipped down in a condition such as it is



when we start with it, or as nearly so as possible. I rather think maybe the people that eat this meat will awaken to this question some time or other and have a little something to say about it.

You can imagine a lamb weighing, when he leaves the mountains, 80 pounds. We weigh them out there. We know what they shrink. Ordinarily they shrink about 7 pounds. In this shipment I weighed these sheep at Laramie, and because of the suffering that they had undergone from thirst they had shrunk an additional 3 pounds.

I call that point to your attention because it is worthy of consideration. It is true we have the financial side to consider. It is a fact that I lost a half dollar a head on those sheep, which is \$2,000, in itself a handsome profit for a man with reasonable ideas of living.

Mr. STAFFORD. Do those sheep make up anything in their shrinkage after being fed at the terminals?

Mr. JOHNSTON. Oh, no; they are not used to the feed, and they do not care about the feed. They continue to lose except they are taken out in the green pasture. But they get mighty little chance to make up. They are sold and slaughtered, and in the condition that I refer to. I want to impress, if possible, that side of the question upon the minds of the members of this committee.

Mr. KNOWLAND. Would there not be some loss under the best conditions?

Mr. JOHNSTON. Yes, sir; but not very much. If I knew that I could get my sheep to move 16 miles an hour, I can provide pretty well for them all along the line. I can get where there is nice food and mountain water, and can take them down in pretty good shape, if I knew I could go a reasonable distance in a reasonable length of time.

That is the defect of the law. To the shipper the law is worthless. The extension of time has largely been absorbed in setting us on sidings from the time that is done.

Mr. TOWNSEND. Is that a general condition, or does it apply to some special road?

Mr. JOHNSTON. It has been my luck both times.

Mr. TOWNSEND. I understood some gentleman to say that, as a rule, the railroads are trying to comply with the law. If they did comply with the spirit of existing law, there would be no difficulty, would there?

Mr. JOHNSTON. Yes, sir; because who is to determine the spirit of existing law? This is their interpretation of it. We have had experience with them on that.

Mr. TOWNSEND. With your interpretation of the law, then?

Mr. JOHNSTON. I would be just as unreasonable the other way as they would be their way. What is there unfair in stating a certain time, at least, which is reasonable that they shall reach there?

Mr. TOWNSEND. I am trying to analyze from the evidence that has been put in now. Some gentlemen have taken the floor and stated that certain railroads are not obeying the law, and cases were numerous, that hundreds of suits were pending. Now, unless you increase the penalty, why will not they violate any other law which you can put on the statute books, if these railroads are not regarding the law; if they are willing to submit to fine, what certainty have you that if we make this other change which you ask that they will observe that?

Mr. JOHNSTON. Well, I have always looked upon the law as a pretty supreme matter, and if I was running the matter they would obey it or they would pay the fine until they got good and well tired of it.

Mr. TOWNSEND. But they do pay the fine.

Mr. JOHNSTON. Yes, sir; but it is a minimum proposition all the time.

You must understand that this fruit that passes has an organization in California behind it, and every movement of that fruit car, from the time it leaves the producer until it reaches the consumer, has that organization behind it, and it is cognizant of everything that takes place; their attorney knows all about it. Without any deflection or discount, the railroad pays that damage bill and does it in a hurry. That I know to be the fact.

Mr. KNOWLAND. Have you not a pretty good organization yourself—the cattlemen?

Mr. JOHNSTON. No, sir; not on this question.

Mr. KNOWLAND. It would be well to get one, would it not?

Mr. JOHNSTON. Yes. But we thought we would come here, to the people we sent here to make our laws, in an effort to get justice.

Mr. TOWNSEND. I suppose we can tell more about that organization when these investigations are through with.

Mr. JOHNSTON. I think it likely; yes.

Mr. STEVENS. What kind of trains carry your sheep cars? Mixed trains; that is, composed of general freight—flat cars, box cars, and cattle cars—all mixed up together?

Mr. JOHNSTON. Well, sometimes; yes, sir.

Mr. STEVENS. Or is it entirely a sheep train or a cattle train?

Mr. JOHNSTON. No; it would not be with 20 cars. They endeavor to pull about 60 cars. You see, there would be 40 other cars of freight.

Mr. STEVENS. What is the freight in those other 40 cars, usually?

Mr. JOHNSTON. I went along with rails, about which I told you a little while ago, and I think about everything else. I could not say as to any given class of freight.

Mr. STEVENS. It is a sort of mixed train, with all classes of freight that is gathered?

Mr. JOHNSTON. Yes, sir.

Mr. STEVENS. What division is St. Anthony on?

Mr. JOHNSTON. It is a branch of the Oregon Short Line.

Mr. STEVENS. Where does it reach the line of the Oregon Short Line?

Mr. JOHNSTON. At Idaho Falls.

Mr. STEVENS. When your 20 cars were picked up at St. Anthony, how many other cars were on that same train?

Mr. JOHNSTON. Not any. They went down alone with them to Idaho Falls.

Mr. STEVENS. And started alone down to the main line at Idaho Falls?

Mr. JOHNSTON. Yes, sir.

Mr. STEVENS. Then they were put in another train, or did your same train run through?

Mr. JOHNSTON. More freight was sent down to Pocatello with us, but not so much more but what they could have pulled it, and did

pull it along very reasonably. It was these bad-order cars that delayed us.

Mr. STEVENS. Do you complain about the rate of speed from St. Anthony down to Idaho Falls?

Mr. JOHNSTON. Yes, sir; I complain about the inexpeditious manner in which things are handled.

Mr. STEVENS. Let us get exactly what the facts were. Do you complain that the train did not run fast enough from St. Anthony down to Idaho Falls?

Mr. JOHNSTON. Well, if I make that answer in the abstract——

Mr. STEVENS. You knew how fast they ran?

Mr. JOHNSTON. I should say the cars, when they were going, went along probably 18 or 20 miles an hour.

Mr. STEVENS. That was fairly reasonable?

Mr. JOHNSTON. Yes, sir; it would have been a very good rate.

Mr. STEVENS. Then from Idaho Falls down to Pocatello did that train move fast enough, or was it delayed?

Mr. JOHNSTON. It was delayed because of its condition, and I think we were put on some sidings. I think we passed some freight, but we had these hot boxes.

Mr. STEVENS. The equipment was in bad condition?

Mr. JOHNSTON. Those two cars were. The others were splendid, magnificent cars from the Northwestern road.

Mr. STEVENS. About how much of a train was it that went from Idaho Falls to Pocatello?

Mr. JOHNSTON. I think, perhaps, 10 cars in addition to those which we had.

Mr. STEVENS. What kind of freight was that?

Mr. JOHNSTON. I believe ordinary freight. It was a short distance of 50 miles; that would make no difference.

Mr. STEVENS. The point I am trying to get at is that your sheep and cattle cars did not move in a train by themselves, did they? They were mixed up with other freight generally?

Mr. JOHNSTON. Yes, sir.

Mr. STEVENS. That is the point.

Mr. JOHNSTON. I will answer that. I think I see what you mean, and I will be very glad to inform you, if I can. We endeavor as much as possible to start out by cumulative shipments amongst ourselves of that which will constitute a train.

Mr. STEVENS. That is what I want to get at.

Mr. JOHNSTON. And we are successful in most instances on the Oregon Short Line. Their general freight and live-stock agents have recognized the wisdom of this, and they have endeavored to co-operate with us, and when we are able to gather a train of 30 or 40 cars they give us good service as far as they go.

Mr. STEVENS. That is just what I want to get at.

Mr. JOHNSTON. But in striking the Union Pacific there was not as much tonnage as they desired to haul, and usually some fruit or other freight of a goodly class would be added to such a train consisting of 30 or 40 cars, as the case may be. If the fruit was not at hand, it is a question of tonnage, anyway. That is the case in the entire western railroad world. I will cite a definite instance to prove that which I am attempting to explain.

In traveling on the railroads, as I have been doing for twenty-five years, I have learned something about it. I understand the dispatching of a train, and I understand by the dispatcher's chart the amount of freight, the number of cars he has to take care of, from and to, and where this or that train may be. I went to the dispatcher in Laramie, who was a very nice, obliging young man, and asked him to let me look at the chart, which he did. I said, "Now, I am made up with this train—I believe the number was 36 cars; let me out over the hill." It was a distance of about 30 miles over considerable of a hill, called "Sherman Hill," and I asked him to let me out with this number of cars. He said, "I am sorry, but I can not do it." I asked him why, and he said, "Because I must put so many hundred tons on that engine." I believe he said thirteen hundred tons. I said, "You know, just as well as I do, that that engine can not any more creep up that hill with thirteen hundred tons on it; even a double header would be liable to be stalled." He said, "This is a tonnage shipment; those sheep do not appear sheep to me; it is a question of tons, whether sheep or rails." I said, "Don't you realize, as an American citizen, it is pretty inhumane?" He said, "It is; that is true, but nevertheless that is just exactly what I have to do."

Mr. STEVENS. He could not help himself?

Mr. JOHNSTON. No; but the system is to blame, and that is why I cite the instance.

Mr. STEVENS. Let us see if we can get some more facts about that. Do you know what classes of freight went in that train—rails and other merchandise?

Mr. JOHNSTON. No; I think not.

Mr. STEVENS. Any fruit cars?

Mr. JOHNSTON. Yes, sir. I am not positive, but I will say it is a usual thing to put fruit and Pacific-coast freight that has come from China, and the like, on such trains—valuable merchandise.

Mr. STEVENS. On stock and sheep trains?

Mr. JOHNSTON. Yes, sir. I will say on those 35 cars there was first-class freight attached to make up the 1,300 or 1,400 tons.

Mr. STEVENS. Do you complain that on that trip you were sidetracked so that a train loaded with fruit could pass ahead of you, or did you have the right of way until you got over that hill?

Mr. JOHNSTON. You remember, now, that in answering a question concerning a division of 78 miles I probably would not be able to state specifically about that. I do not definitely remember that there was, but in the main such cars do pass us.

Mr. STEVENS. That is, fruit trains do pass you?

Mr. JOHNSTON. Yes, sir.

Mr. STEVENS. What I want to get at is this: Do you know the rate of freight that is paid by those through trains as compared with the rate of freight that you pay?

Mr. JOHNSTON. I went without my lunch to obtain what facts I could in the matter, and I called up the Baltimore and Ohio, and the chief clerk in the freight agent's office gave me this information—that \$1.15 per hundred is paid on oranges and bananas in crates that weigh for the standard 72 pounds and for the jumbo 78 pounds on oranges, and 84 pounds for the standard and 92 for the jumbo on bananas, and the minimum weight of the car is 24,190 pounds.

Mr. STEVENS. What is your rate and your minimum?

Mr. JOHNSTON. I am sorry that I did not have the time to figure this definitely, absolutely; but I have it sufficiently clear to answer your question. I am very glad you called my attention to it. That makes \$278. Mr. Gooding, do you remember the rate from Shoshone, per hundred, on lambs?

Mr. GOODING. I remember the rate per car of 23,000 pounds was \$207.50.

Mr. STEVENS. So there is not much difference, so far as revenue is concerned?

Mr. JOHNSTON. No. But there happens to be several hundred miles difference in the distance; but the impression appeared to be obtained by the committee that perhaps there was a higher rate paid on these cars.

Mr. STEVENS. That is what I wanted to know.

Mr. JOHNSTON. They are the facts as stated to me by this gentleman who designated himself as clerk in the Baltimore office of the Pennsylvania Railroad. I am pretty confident he is just about right, or within five or ten dollars, in either instance; \$207.50 I know to be right. And we pay as 1,420 miles from Chicago to Ogden is to 2,300 miles to San Francisco, and as \$207.50 is to \$278; so is the discrepancy in favor of the San Francisco haul. I am very glad I have had the opportunity to clear that point up.

We sincerely trust that, aside from the financial interest—that for the interest of humanity—you will give consideration to this amendment and that it will receive a favorable report for passage. You will find the argument has been made that this legislation should be included in a bill which should deal with reciprocal demurrage, car shortage, and so forth; but in behalf of the National Wool Growers' Association, I sincerely trust you will consider this amendment to the statutes which now govern the transportation of live stock and consider it on its own merits, and not mix it up with other intricate questions, from which it should be separate. Car shortage and many other railroad questions are not so related to this matter that they should be placed in one lot. If the cars can not be obtained, we may be disappointed; but we will have speed and can hold our stock until we get the cars. But when our cars are loaded and en route to the market, it is only fair to the humane interests of the live stock that they be moved with reasonable dispatch. We can see no reasonable objection that can be raised to this measure.

You will observe that section 4 gives power to the interstate railroad commission to make the proper exception in cases where the physical condition of the road is such that they can not meet the requirements of the 16-mile per hour speed minimum limit. The question was raised during the discussion about that requirement, regarding so much time for sidings. Take a division 100 miles long, where the engines change. Thirty minutes is ample time to change an engine and pull a train out. If there is any dispatch used in the dispatcher's office, he can have that crew ready when this train comes in. Thirty minutes is ample time to consume with a perishable train of any commodity, whether live stock, fruit, or anything that is perishable. Then, taking thirty minutes consumed at both ends of the 100-mile division, which is an hour, it will be apparent to you that that will strike one hour from the running time of 16 miles per hour, or leave it five hours, and 5 times 20 is a hundred; or, it is a rate of

20 miles an hour they must obtain. I am giving them thirty minutes for the change which should be charged up to the other division, whereas 16 miles an hour takes six hours, 6 sixteens being 96.

I am very grateful for your attention and shall be glad to answer any questions on behalf of the stock growers of this western country upon this subject. I am vitally interested in it myself. My bread and butter have for many years depended on it and probably will depend upon it for the rest of my days. But, aside from that, there is something so unmanly, so ungenerous, so unfair, so inhuman in the punishment of this stock to the production of which a man has given his life and energy that it is but fair to consider it in some manner or other, and we ask for specific legislation on the subject.

I want to say, too, that so far as the rate question is concerned, it should not enter into the discussion here. That is absolutely within the power of the Interstate Commerce Commission already by United States statute. If the rate is not sufficiently high, raise the rate. I have offered to pay \$50 a car, time and again, for a faster run, and it has been refused every time, and why? It will be apparent to you that if but for one time a positive case could be cited that the railroad had pulled the cars through according to a time schedule it would be a very proper thing to ask them to do it all the time. I can show you correspondence where they have refused to accept more money; but we are not begging for the railroads.

Mr. TOWNSEND. You do not claim that they should be made to accept any bonus you may offer them?

Mr. JOHNSTON. No; I do not claim that. But I would give anything to take this stock down. In the case I mentioned at first, I would have given \$1,000 and still would be \$1,000 in pocket as against the actual loss I did suffer.

Now, in answer to the gentleman from Minnesota, I wish to state my positive experience in transferring onto the Milwaukee. There is a transfer made in Council Bluffs. Usually there is a very congested condition there. They attempt to make the runs, and sometimes that road is not treated very fairly in the transfer. But they do not get hold of the stuff in time to pull it in. They make a very good run, but there is always a long delay at the river. I cite that in justice to the railroads. We want to be friendly with the railroads. We need them, and I would not wonder but what maybe they want us. But we want a fair deal in this matter, and in the consideration of it we want a fair statement of the facts as they really exist, as they really have existed in the past thirty years in the experience of livestock shippers. I never had any trouble when I got against those competitive roads, never a particle of trouble. From Nebraska on I always sleep easy, for there are four main trunk lines, and they are all out for the money. I do not know whether they are all together or not, but I know this, that they give you a very good run.

Mr. STAFFORD. When reaching a competitive point, have you the power of selecting the route over which your shipment is to go?

Mr. JOHNSTON. Yes, sir; in this instance. We have not with our wool, but that is another phase that I shall not take the time of the committee to discuss.

I thank you for your attention.

**STATEMENT OF E. H. McALLISTER, PRESIDENT UTAH WOOL GROWERS' ASSOCIATION.**

Mr. McALLISTER. Mr. Chairman and gentlemen, I am president of the Utah Wool Growers' Association, of Salt Lake City. I will not take up the time of this committee but for a few minutes. I appeared before the subcommittee in 1908 and made a statement at that time that I do not think I could enlarge much upon. Our association is in full accord with the national association on this speed-limit bill. It is the uncertainty that our shippers have to experience about which we are objecting. We do not know whether we will get a 16-mile run, an 8-mile run, or a 4-mile run. If there was some certainty about live-stock trains, so that we could tell where our feeding places would be, and when we would reach our final destination, we would feel much better over it.

I have no practical experience to give. Mr. Johnston has given you his, and Mr. Gooding has given you his. We feel that there ought to be a certainty in delivering live stock. We surely ought to have the preference over every other freight and be next to passenger trains.

We object to the tonnage system being applied to stock trains. We believe that when we have a reasonable stock train it should be pushed through instead of being stopped and laid up with other freights.

Gentlemen, I will not take any more of your time. I will just state that is the feeling of the stock growers of Utah. We believe we ought to have a speed limit of at least 16 miles in justice to the shippers and the stock of the western country.

Mr. WANGER. Are you a shipper yourself?

Mr. McALLISTER. Yes, sir.

Mr. WANGER. Over what road?

Mr. McALLISTER. We ship over the Union Pacific, from Altamont, Wyo. While Utah men, we graze in western Wyoming and eastern Utah.

Mr. KNOWLANDS. Do you have less difficulty in the makeup of an entire stock train than you do with a mixed train?

Mr. McALLISTER. I do not know about that. I certainly think we do. I have not traveled on a stock train for about twelve years. But years ago when we made up a stock train we got a very fair run. It is of late years that there has been complaint on account of the tonnage distance and the adding of other freight to stock trains.

Mr. TOWNSEND. Has your association ever taken this matter up with the railroad organizations to see if you could not agree upon some rules which you would stand by?

Mr. McALLISTER. No; my association has never taken it up individually.

Mr. STAFFORD. I assume the difficulty of having a through stock train arises over the different tonnage rules of the various systems over which you have to transport your shipments.

Mr. McALLISTER. That is what I understand. I believe if the tonnage system was abandoned on live-stock trains, we would get much better service and there would not be so much complaint. It is the uncertainty, gentlemen, that our Utah men are objecting to. If we knew when we could arrive at the markets we could better estimate

the shrinkage of our stock, better estimate where to feed and pick out our feeding places. But the way it is now, we do not know where we can unload or when we will reach the market. I thank you for your attention.

**STATEMENT OF GEORGE P. McCABE, SOLICITOR FOR THE  
DEPARTMENT OF AGRICULTURE.**

Mr. McCABE. I am here in response to the request of the committee, prepared to answer any questions the committee may ask me, as sanely as I can.

Mr. WANGER. You have had experience with the operation of this act. Will you detail conditions at and after the amendment to the act in 1906?

Mr. McCABE. Yes, sir. Prior to the enactment of the 1906 bill the Department of Agriculture was proceeding to enforce the law to the best of its ability. The inspectors of the Bureau of Animal Industry were collecting cases and sending them in to the Washington office. We were sifting them out, gathering the evidence and sending them to the Attorney-General to be sent to the proper United States attorneys for prosecutions. We had piled up over 2,000 cases. While the law had been on the statute books since 1873, it had been a dead letter. I think there were 50 reported cases and of those I could find there had been but 15 prosecutions in something like thirty-one or thirty-two years. The railroad companies started to comply with the terms of the law, that is they started to unload at the expiration of twenty-eight hours. There was no provision in the law that the live stock should be unloaded in a humane manner or that it should be unloaded into properly equipped pens, and they unloaded it anywhere and everywhere, sometimes in pens belly-deep with mud and sometimes onto the prairie. The result was that from a humane standpoint greater suffering ensued to the live stock than if they had been carried on without being unloaded at all.

When the matter was taken up by the live-stock association and was referred by the proper committee to the Department of Agriculture for consideration, it was the view of the Secretary of Agriculture that the law needed amendment, that there should be a provision providing for properly equipped pens and for humane loading and unloading, and that there should be a speed minimum. The law was passed, but the speed minimum was omitted.

I think there has been a great deal of misapprehension as to the conditions to-day. It is my honest judgement that every railroad company in the country to-day is trying its best to obey the law as it is on the statute books. For the fiscal year ending June 30, 1908, the Department of Agriculture reported nearly a thousand violations to the Department of Justice for prosecution. For the fiscal year ending June 30, 1909, we reported not quite a third of that number. We had an increased number of inspectors on the road, and I think that they were at least as vigilant as they had been in the past. That to me seems proof that the railroads are at least obeying the law.

What is the result? The title of the act is "An act to prevent cruelty to animals while in transit." I feel satisfied, from personal observation and from the reports of the inspectors, that by complying with the terms of the law greater suffering is inflicted on the



animals in interstate transportation than ever before, and for this reason: A great deal has been said here to-day about the tonnage system. I am not a railroad expert, but it is a matter of common knowledge that one theory of railroading now is to move the utmost possible tonnage with one engine, no matter how slow you move it. If it is applied to live-stock movements the railroad company goes along and makes up a live-stock train—I do not think it makes very much difference whether it is all live stock or part rails. Perhaps our friend, Mr. Johnston, may have barked his shins when getting over the rails to get to some other cars, and that may have accounted for the objection to the rails. But the tonnage is there and they can not make the speed. What is the result? They unload the cattle or the sheep every twenty-eight hours, if a man does not sign a request, and every thirty-six hours if he does sign it. Every additional time those range cattle or those sheep are unloaded, with the consequent reloading, it is an additional hardship to them.

So it is my personal judgment that to carry out the object of this act as announced in its title—an act to prevent cruelty to animals while in interstate transit—the only way to do it is to provide that the time between the point of loading and the point of destination shall be shortened. The only practical way is to provide for a speed limit, as I see it.

There are extreme cases. Somebody has said something in the papers about the humanitarians being made up of long-haired men and short-haired women. I am not very long-haired, but when you see some of these cases, when you sit at your desk and these cases come in to you day by day, you can not help getting up a little feeling of righteous indignation. I picked up a case this morning where it was reported sheep had been confined so long they had eaten the wool off each other's backs. They had been in the cars fifty-six hours without being unloaded. It was a violation of law, and, of course, we will prosecute them. But I can not help but feel the imposition of a penalty as provided in this act does not begin to make up for the suffering inflicted upon these animals. That may be the view of a sentimentalist, but I confess it is my view. That is an extreme case.

One other thing I want to make clear. The figures that were used this morning by Doctor Spillman can not fairly be said to be representative of the rate of speed which is consumed by railroads in moving live stock, because those figures were made up, as Mr. Mann pointed out, from reported violations of law where there probably had been unusual delay, so that the rate of speed that is shown in those figures would not be fairly representative of the rate that was observed.\*

If there are any questions that members desire to ask, I will be glad to endeavor to answer them.

Mr. STEVENS. From your experience, then, you would think the practical effect of such an act as is before us would be to require the abandonment of the tonnage system in moving stock trains.

Mr. McCABE. Yes, sir; or the putting on of a few more engines. I overheard the testimony this morning, and some one asked the question—I think it was Judge Kennedy—about the prosecutions we had made during rush times. The answer the court has given is this, that the railroad company is a common carrier and it holds itself out to

accept this live stock subject to all the statutes, and its duty is to provide equipment sufficient to carry on its business in a lawful way. There is really a case where more power would not result in more speed. Perhaps I should refer to another thing that was mentioned this morning, the question of the enforcement of the law. The law is being enforced. It is being enforced vigorously. There are pending in the courts now, I think, only about 300 cases, and those cases are none of them more than fourteen months old. When we consider the work on the calendars, there has been no delay in disposing of them.

Mr. STAFFORD. Do I understand you to take the position that the penalty prescribed in existing statutes is not adequate to compel the railroad companies to respect it?

Mr. McCABE. No; I would not want to take that position. I do not think you would better the situation. You might lessen the number of violations of the letter of the statute if you increased the penalty, but the railroad companies, I know of my own knowledge, have discharged their dispatchers, have discharged conductors, have discharged yardmasters, for not obeying their instructions in unloading the animals. The point I want to make is that this unloading of the animals instead of benefiting them from a humane standpoint has been of positive injury to them.

Mr. STAFFORD. What was the occasion for the very harsh and inhumane case you mentioned of the shipment of cars where the sheep were obliged to feed off the wool of other sheep?

Mr. McCABE. The average railroad man is no more inhumane than you and me. It is not a deliberate question of starting out to do it, but it is a question of neglect.

Mr. ADAMSON. To accelerate the speed of these cattle trains would in effect be raising the classification and raising the rate?

Mr. McCABE. No, sir; I do not think so. I think that starts upon a premise I am not competent to say whether correct or not. It starts on the premise that railroad companies are giving to stockmen now all they are paying for, and I do not know whether they are or not.

Mr. ADAMSON. If the arrangement is changed by making this class of trains faster, some other must give way to it, and it is probable that the railroad would insist that there should be a rearrangement of charges.

Mr. McCABE. I think Nebraska has a statute requiring 18 miles an hour on interstate trains. That case has been contested on constitutional grounds, among others taking property without due process of law. The supreme court of Nebraska, in sustaining the constitutionality of the law, pointed out very clearly that the railroads had accurate cost-keeping systems. They know what it costs them, and if they could make a proper showing at any time, they could increase the rate. I have not heard that the rate has been increased in any States where they have a speed-minimum law.

Mr. STAFFORD. In your examination of these complaints cited this morning by Doctor Spillman, do you find they arise at any one period of the year, or is it usual throughout the year?

Mr. McCABE. There are two seasons of the year, of course, when there are great movements of live stock, and as there are more movements at that time of the year, there are, of course, more violations.

Mr. STAFFORD. They are not due to any climatic conditions, necessarily?

Mr. McCABE. Oh, occasionally. For instance, one road I think of, the Union Pacific Railroad and the Southern Pacific, after the San Francisco earthquake, experienced great trouble. They had a rush of passenger business and had great trouble handling their live-stock movements.

Mr. STAFFORD. Regardless of the equipment, under the existing statute the carriers can conform by permitting them to be fed every twenty-eight or thirty-six hours?

Mr. McCABE. Yes, sir.

Mr. STAFFORD. But have you considered in framing your amendment whether the far western railroads, where the equipment is very poor—for instance, the Soo line in Dakota, which I have ridden over—would be incapable by reason of their very uncertain roadbed in meeting the requirements as prescribed in this bill?

Mr. McCABE. I think, and I express the opinion with some hesitation, because I do not assume to be a railroad expert at all, that any road can certainly make 12 miles an hour on live stock.

Mr. STAFFORD. It was said here this morning that to make 12 miles an hour it would require 30 miles while under highest speed, and it has been claimed that on some of those western roads where the road bed is very poor that there are many instances where the train jumps the track going at that rate of speed.

Mr. McCABE. Yes, sir. Of course that is a matter for the consideration of your committee. But it is in the endeavor to meet that that provision is made in section 4 that the speed minimum may be reduced by the Interstate Commerce Commission on a proper showing by the carrier. Of course as to whether or not that is low enough is a question of detail.

Mr. WANGER. What has been the experience under the state laws that have fixed their minimum rate of speed?

Mr. McCABE. I do not think, with the possible exception of one State, that the speed-minimum laws of the States have been vigorously enforced.

Mr. WANGER. I observe in your reports for 1908 and 1909 a number of cases against the terminal railroad association of St. Louis.

Mr. McCABE. Yes, sir.

Mr. WANGER. How do the delays occur there?

Mr. McCABE. Well, they do not any more. The law provides that the time consumed by connecting carriers shall be computed. For instance, if a shipment starts on the Union Pacific or on the Oregon Short Line and the Oregon Short Line makes a delivery at the expiration of eighteen hours to the Union Pacific, the eighteen hours which was consumed by the Oregon Short Line is counted against the Union Pacific, and similarly the courts have held that where the twenty-eight hours has expired or where the thirty-six hours has expired a connecting carrier, which receives the live stock knowingly after the time has expired, is also amenable to the statutes. That was the case very largely with the terminal railroad of St. Louis. They were receiving live stock after twenty-eight hours and thirty-six hours had expired, and they made themselves liable under the statute on that account.

There was also a delay there. It shows what can be done. I went out at one time to St. Louis and went over the whole situation

with the president of the terminal company. I went out on the tracks and over on the two bridges—the Merchants Bridge and the Eads Bridge—and observed the movement. I saw there where they had shortened up prior to the enforcement of the twenty-eight-hour law, sometimes two or three hours. After starting the enforcement of the twenty-eight-hour law, everybody got up on their toes and cut out all unnecessary delays.

Mr. WANGER. Does any other person wish to speak for the bill? If not, you gentlemen representing the railroad companies may proceed.

#### STATEMENT OF F. C. RICE, REPRESENTING THE CHICAGO, BURLINGTON AND QUINCY RAILROAD.

Mr. RICE. My name is F. C. Rice, of Chicago. I am connected with the Chicago, Burlington and Quincy. The Chicago, Burlington and Quincy traverses what is known as the "corn belt" of the United States, and necessarily it must be a large stock-producing country through which we go. The Chicago, Burlington and Quincy handles more stock than any other railroad in the world. The next railroad to it is the Chicago and Northwestern, and the next railroad to that is the Chicago, Milwaukee and St. Paul. The Chicago, Burlington and Quincy in Illinois has the largest mileage of any railroad in the State and, as I said, traverses the corn belt of Illinois. It has the largest mileage in the State of Iowa of any other railroad, and the State of Iowa is a corn-belt State. It has the largest mileage in the State of Nebraska of any other railroad, and that is known as a "corn-belt State." The Chicago, Burlington and Quincy has about 1,500 miles of railroad in the State of Illinois, and between seven and eight hundred miles of that road is composed of branch lines. There are 15 branch lines in the State of Illinois which empty into main lines, there are 16 branch lines in the State of Iowa which empty into main lines, and there are about 25 branch lines in the State of Nebraska which empty into main lines.

The stock that originates on the branch lines very frequently is delivered to a main line, and from that main line to another main line, and from that main line to another main line before it reaches the main line that finally takes it to the Chicago market in Illinois. The same is true in Iowa, and the same is true in Nebraska.

The stock on our main line, usually from Chicago to the Mississippi River, to Burlington, Iowa, and from Burlington, Iowa, to Omaha through Iowa, and from Omaha west on the main line, makes better time than is made anywhere else on our system. After all, we are never able to make the time we would like to make with our stock. I have been very closely connected with the stock traffic practically all my life, before the railroad extended west of the Mississippi River. I know stockmen pretty well, and I think I understand what it means to handle stock. We have a great many branches that are 70 miles long or 100 miles long that are in very large stock-producing countries. And on certain days of each week—say for a Monday morning's market or a Wednesday morning's market—those particular days are devoted to stock shipping. I know I can recall several hundred-mile branches where we start out with an engine and a caboose and run that 100 miles, and when we finish the trip we may

have 25 or 30 or 35 cars of stock in the train, and we have not made over 7 or 8 miles an hour. The reason we have not is because of the time it takes either to load or pick up the stock. Oftentimes the stockmen are not ready with their stock. They have not got it loaded or they are in the midst of loading it, or sometimes the stock is even approaching the station when our train arrives.

We do not want to go off and leave the stock, so we stop and help load it. I do not think we ever ran a train in our lives over that 100 miles and made 10 miles an hour and picked up a train of stock. It can not be done. That is a simple illustration of all those branch lines I have mentioned. The same thing obtains everywhere.

Mr. WANGER. How many stops would you make in that hundred miles?

Mr. WRIGHT. In the hundred miles I was thinking of we made about 20. There are 26 stations there. I have operated the line as train dispatcher, as train master, and as superintendent. As I said, we make better time on our main line, but it is impossible on the main line to catch up the time we lose on the branches. As I understand from the law, we are liable to fine or to penalty unless we make 16 miles an hour from the time the stock is loaded until it is delivered at its terminal, at the end of its run.

You all know what a large stock market Chicago is, and you know that we have, for instance, the hours-of-service law to obey. We must not keep our men on duty over sixteen hours. We have positive instructions, which are literally carried out, that no trainmen or enginemen who arrive at the connection in Chicago with the stock-yards tracks shall be permitted to start to go with the train that is brought into the stock yards, which is 4 miles away, unless they have six hours to make it. If they have less than six hours, they do not start. The whole crew is relieved by a fresh crew of men, because of the uncertainty of getting to the stock yards without violating the law. So that you can see, with the best time we can possibly make upon our main line, the time it takes for delivery at the stock yards could not possibly be helped by any human being. There is no possible way it can be improved.

Mr. TOWNSEND. Is the length of time it takes to move a carload of stock now increasing or decreasing as compared with past years?

Mr. RICE. I think for the last three years the time consumed on the road and in handling the stock is very much improved.

Mr. TOWNSEND. It is improved?

Mr. RICE. Yes, sir; it is improved. I think it is the purpose of every railroad to improve it. I think myself it pays to improve it, and I think that the railroads are honestly striving to improve it.

Mr. TOWNSEND. What are your rules as to tonnage? Will you permit the movement of a train unless it has the maximum tonnage?

Mr. RICE. I do not think that rule was ever enforced on our railroad; that is, to restrict a train to the maximum capacity of its engine.

Mr. TOWNSEND. Do you try?

Mr. RICE. We do not try even to do it. Of course we know. We have ratings for our engines. We know what they ought to do, what we have seen them do, and what they can do. But we realize it does not pay.

Mr. ADAMSON. I suppose that, situated as you are with those branch roads, you can not always get a full train load, and you have to pick up a car or two at each intersection?

Mr. RICE. That very often happens.

Mr. ADAMSON. So that you have in your train load different cars in which cattle have been confined different lengths of time?

Mr. RICE. Yes, sir. We may come in at a junction point with the main line with a few cars of stock, maybe 5 or 10 or 15, and it is arranged to have those cars picked up on the main line either by a regular scheduled train or some extra train which is specially arranged to pick them up.

Across Illinois we have some 10 junction points. It is impossible to have a train right there then and ready to pick up that stock when it comes in. Of course, the stock has to be switched out of the train that brought it in and switched into the train it is to go in.

Mr. TOWNSEND. What arrangement have you as to classification of freight? Do you have certain classifications of freight that take preference over others?

Mr. RICE. Yes, sir. On the Chicago, Burlington and Quincy, which is eminently a stock road, as you know, stock takes preference over everything.

Mr. TOWNSEND. You have no fast-line freights that take preference of it?

Mr. RICE. We have no train of any character that takes preference to the stock train. It does not now and never has on our railroad; that is, by any regulation or rule. If it has been, the preference has been given in particular cases by some subordinate employee.

Mr. STEVENS. From how far west do you run through stock trains to Chicago?

Mr. RICE. We do not run very much stock to the Chicago market from west of the Mississippi River, from west of Omaha.

Mr. STEVENS. What do you do with the stock you get west of Omaha?

Mr. RICE. It goes into the packing houses at Omaha, St. Joe, or Kansas City and Nebraska City. Formerly that stock all went to Chicago, but for several years past it stopped at the Missouri River. We run very little stock originating in Nebraska to Chicago.

Mr. TOWNSEND. How do you observe the law now? Do you have any regard to the place the twenty-eight hours will get you to?

Mr. RICE. We are very fortunately situated for stock yards. We have stock yards in Nebraska, stock yards in Iowa, and in Illinois. At my home town at Galesburg, Ill., we have large stock yards, and it is always convenient to get stock to the yards. I have not heard of any complaint from stock men in any manner, shape or form for three or four years as to the twenty-eight hour law or as to our handling of the stock and the time we make with it.

Mr. STAFFORD. How long does it take for the various stock trains to run from Omaha to Chicago?

Mr. RICE. As I said, we do not run hardly any stock there, but we figure twenty-four hours if we do run in.

Mr. STAFFORD. And the distance is how much?

Mr. RICE. Five hundred miles. I think the Northwestern and the Rock Island and St. Paul roads do run considerable stock from the Missouri River to Chicago.

We have the same difficulty to which I referred at the Union Stock Yards in Chicago, at Omaha, and St. Joe, and Kansas City, and at St. Louis, East St. Louis, and Peoria. Those are the stock markets. But it is not so great as it is at Chicago and Chicago can not be helped. I do not see what anybody can do.

Mr. STEVENS. What occasioned that delay, congestion of business?

Mr. RICE. Yes, sir; congestion of business.

Mr. BARTLETT. You say if this sixteen hours minimum speed be adopted it would be utterly impossible for you to comply with it on those branch roads?

Mr. RICE. We would be fined 500 times a day and subjected to penalty, and could not help it. We can not make 12 miles an hour, either.

Mr. BARTLETT. Is it not a fact, did not you say just now that when you started a train upon these branch roads it sometimes consisted merely of an engine and a caboose?

Mr. RICE. Yes, sir.

Mr. BARTLETT. And you gather up the other cars as you proceed?

Mr. RICE. Yes, sir.

Mr. BARTLETT. And you necessarily lose time?

Mr. RICE. Of course; you can not help it.

Mr. BARTLETT. And you say, as I understand you, that the rate of speed does not exceed 8 or 10 miles on branch roads?

Mr. RICE. That is from one terminal of the branch road to the other terminal of the branch road you would not exceed 7 miles an hour.

Mr. BARTLETT. And it would be impossible when you strike the main line to make up the time?

Mr. RICE. That is true.

Mr. TOWNSEND. Have you any way freights that move faster than that? What time do they make?

Mr. RICE. Very slow time.

Mr. TOWNSEND. Slower than 7 miles?

Mr. RICE. I won't say that. We try to get our way freights to make 10 miles an hour, but we do not succeed in it.

Mr. TOWNSEND. I have been informed, and you will know whether or not it is correct, that way-freight trains on the average road make 14 and 15 miles an hour. I was wondering, if that were true, why equally fast time could not be made with stock trains, the same as is made by way-freight trains that stop at every station.

Mr. RICE. You are dead right about that. I do not believe there is a way-freight train in the world that moves over 10 miles an hour, and there are very, very few way-freight trains that make that speed, because they have to stop at these various stations and switch and run onto sidetracks connected with industries and various plants at such stations.

Mr. TOWNSEND. Did I understand you to say there has been absolutely no complaint to you in the last few years from shippers?

Mr. RICE. I have been connected closely with stockmen for several years, and there has been no complaint.

Mr. TOWNSEND. Have you been fined, brought into court for violations?

Mr. RICE. Not once. We have not been fined once by the Government.

Mr. STEVENS. The report of the Solicitor of the Agricultural Department, who has just been on the stand, states that for the year ending June 30, 1909, the Chicago, Burlington and Quincy was fined and paid 13 separate fines in that year.

Mr. RICE. I never heard of it.

Mr. WANGER. And 16 the year before.

Mr. RICE. I never heard of it. I was going to qualify my remark by saying I had not heard of it if there had been such a fine.

Mr. STEVENS. Where do you live?

Mr. RICE. At Chicago.

Mr. STEVENS. And 10 of these fines were paid in Chicago.

Mr. RICE. I wanted to qualify my remarks by saying I did not know sure about that. But think of 13 cases. We are the largest stock railroad in the world. I do not mean we are just a little larger, but we are very much the largest.

Mr. TOWNSEND. I was wondering, inasmuch as you had not heard of the court cases brought against you for violation of the law, if you would know about the complaints of the shippers.

Mr. RICE. Of course I might not know about all complaints of the shippers, but I think I would. I am pretty sure I would. As to the fines, I was down here four years ago. I came down to see the Secretary of Agriculture about the twenty-eight-hour law. We were all checked up about obedience and compliance with that law. I was one of the committee of three or four who called upon him to try and help and get the railroads to obey the law honestly. They had a number of cases against us at that time. They had a whole lot of cases against my railroad. If they had imposed all of those fines and prosecuted us, it would have cost us a good deal of money, but they did not do so on our promise and the promises of several others of us that we would try and make an honest effort to obey the law, and so they let us off.

For two years I was in pretty close touch with the Department of Agriculture and with Doctor Melvin. I called on Doctor Melvin several times to inquire how we were doing, what complaints he had, and it was very pleasing to me to hear Doctor Melvin tell of the very satisfactory way in which the Chicago, Burlington and Quincy handled its stock.

I am very sorry I did not know about those 13 cases, because I do not think that is a very bad record for a railroad that handled in 1907 139,000 cars of stock. The next railroad in the world to that was the Chicago and Northwestern, which handled 103,000, and next to that was the St. Paul, which handled 84,000.

Mr. BARTLETT. Do you run separate stock trains, or do you run the stock cars in mixed trains?

Mr. RICE. We try to run separate stock cars whenever we possibly can. We can not do that on the branches, of course.

Mr. BARTLETT. Is not a good deal of this delay due to the picking up of cattle cars? Does not some delay occur in picking up additional cars in these cattle trains?

Mr. RICE. On our main line we try to marshal these trains, assemble the stock and get them into stock trains, and not have any dead freight or any other class of freight with them.



Mr. BARTLETT. Do you ever have separate trains of stock alone and no other freight with it?

Mr. RICE. Oh, yes, sir; every day.

Mr. BARTLETT. And does the same delay occur as would occur in picking up all kinds of freight and putting it in the stock train?

Mr. RICE. Yes, sir. It takes as long to pick up a car of stock as a car of dead freight. Only I say when we assemble our stock on the main line at terminal points and at larger points we try to make them up into a full train, so that they will not be bothered with push freight, and they go from that point to the market. My headquarters have been at Galesburg. They are not there now, but they were for thirty years, and I always tried to make stock up into separate trains. There are thousands of times I have seen 20 stock trains leave my division and go to Chicago, 163 miles, without a car of anything else in them.

Mr. BARTLETT. When you have a separate stock or cattle train, does the same delay occur?

Mr. RICE. In picking up?

Mr. BARTLETT. Yes.

Mr. RICE. Yes, sir.

Mr. BARTLETT. Without picking up any other except that?

Mr. RICE. Of course the delay is the same. As I have already explained, we make up solid stock trains at Galesburg, the converging point where stock comes from various directions. We get the bulk of it and there is an opportunity for us to make up solid trains, and we try to do that and keep the dead freight out of the stock.

Mr. BARTLETT. As I understand you, you say you could not obey the 16-mile minimum even if it was applicable alone to stock trains?

Mr. RICE. No, sir. If no dead freight was put in it, we could not do it. At my station, at Galesburg, where I had absolute charge, we would have five or six or seven trains of stock come in from various directions, all converging at this point and coming together within a period of two or three hours. We tried to get this stock together. We would have to pick it out of one train, this train and another train, assemble it, and get it into one train. The stockmen preferred not to have any dead freight in their trains.

Mr. KNOWLANDS. After you get it into one train, in going from one point to another point you can easily make 12 miles or 16 miles?

Mr. RICE. Yes, sir.

Mr. KNOWLANDS. For instance, the stock arrives at one given point. Of course this is not on your line, but say it is at Ogden, and wants to go to Omaha. If you made up a stock train at Ogden to go right through to Omaha there would be no trouble about the time?

Mr. RICE. Oh, no.

Mr. WANGER. What is the running time of stock trains from Galesburg to Chicago?

Mr. RICE. For about fifteen years, when I was in charge there, I was never satisfied if a stock train did not make 20 miles an hour from Galesburg to Chicago. If any stock train made less than 20 miles an hour, I always took the matter up to see why it was. I knew I had to do that. I knew I had to do it to make up for slower time made elsewhere. Galesburg happened to be a large

feeding place, where we fed from 250 to 350 cars of cattle in one day. We had to unload 300 cars of cattle, if there were that many, and we had to load them up. Of course the stockmen all wanted to lie at that point until the very last minute, so as to get into Chicago at the proper time. The proper time is between 7 and 8 o'clock in the morning. The stockmen always consider—and it is probably true—that stock that arrives between 7 and 8 o'clock in the morning is worth from 5 to 10 cents a hundred more than it is if it arrives after 9 o'clock in the morning.

Mr. STEVENS. You stated that you did not ship many cars of stock from Omaha to Chicago.

Mr. RICE. Yes.

Mr. STEVENS. Then you do not ship many from west of Omaha, from Denver and those ranges, right through to Chicago?

Mr. RICE. I meant that; I meant that very little stock passed the Missouri River.

Mr. STEVENS. Do you get many stock cars from the Union Pacific Railroad in the course of a season transmitted through to Chicago?

Mr. RICE. We do not get any.

Mr. STEVENS. You do not get any?

Mr. RICE. We do not get any; no.

Mr. STEVENS. So that the complaints that these gentlemen have made here to-day would not obtain as to your line?

Mr. RICE. No. That is, I would not say that we did not get any. The Northwestern road is the connection of the Union Pacific; it is under the same control and management, in a way. They work in harmony, and they get the stock, I think, from the Union Pacific. We do not think we get any of it, unless it is stock going to some local place.

Mr. WANGER. Is the running time of stock trains between Galesburg and Chicago the same as it was when you were living at Galesburg?

Mr. RICE. Yes. I think we have improved a little upon that. We have tried to improve upon it.

Mr. STEVENS. Are you personally familiar with the speed of stock trains west of the Missouri River?

Mr. RICE. In a general way I am.

Mr. STEVENS. How would the speed of stock trains there compare with the speed of trains around Galesburg?

Mr. RICE. I have been out on the Nebraska lines; I go out two or three times each summer or fall during the stock-shipping periods, and the positive orders to the superintendents of the different divisions there are that they must make 20 miles an hour.

Mr. STEVENS. That is, of actual running time?

Mr. RICE. From the time they leave one terminal until they arrive at the next terminal.

Mr. STEVENS. You refer to division terminals?

Mr. RICE. Division terminals; yes. And I understand that that is done at a very great sacrifice.

Mr. STEVENS. A very great sacrifice of what?

Mr. RICE. That is, that other trains are delayed and great advantages are given to these particular stock trains. Other trains are kept out of the way, and they are run very light, and great effort is made to make that time to help the stockman; and it is right that

that should be done. They have long distances to travel, and I am in full sympathy with the fast time for their stock.

Mr. WANGER. That is in Nebraska?

Mr. RICE. In Nebraska; yes.

Mr. STEVENS. Does the eighteen-hour law in Nebraska rather accelerate that system of orders?

Mr. RICE. I do not think it has anything in the world to do with it. That was our practice before any such law was passed.

Mr. WANGER. What is your practice in Missouri?

Mr. RICE. We make fully as good time on our main lines in Missouri as we do in Nebraska.

Mr. WANGER. Are there any other questions? Do you wish to say anything further, Mr. Rice?

Mr. RICE. I think not.

Mr. TOWNSEND. Have you a Northwestern man here that is going to testify, and a Union Pacific man?

Mr. NEALE. I think not; sir.

A GENTLEMAN. We will have them here at some time later.

Mr. RICE. I am very sorry there is not a Northwestern man here, and a St. Paul man, or a Rock Island man. They are roads that are run through practically the same country that we do, and they are large handlers of stock.

Mr. TOWNSEND. It is very important for us to have here some of those gentlemen against whose roads we have been taking testimony.

Mr. PAULDING. If you can adjourn this hearing for a few days, we will engage to see that the representatives of some of those roads are here. I can not answer for the roads, but I can answer for my associates in saying that we will endeavor to get them here.

Mr. RICE. I can say to you gentlemen that before coming to this hearing, before I left my hotel, I wired to the Chicago managers of both those roads and told them they ought to be here, and asked them to come here. I did not know whether they could get here in time to be heard or not, but I have asked them to come here. I thought it was their duty to be here to explain the situation to you.

Mr. WANGER. That is, you sent for them to-day?

Mr. RICE. Yes; just before I came into this room.

Mr. KENNEDY. Where you maintain a speed of 20 miles an hour with these trains, they are all made up when they start?

Mr. RICE. Yes, sir.

Mr. KENNEDY. And they take on no more freight?

Mr. RICE. No, sir.

Mr. KENNEDY. They run as through freight?

Mr. RICE. Yes, sir. You can not make 20 miles an hour with any train and do any work. That is absolutely a fact. I have run 20 trains out of Galesburg, and had every one of them go to Chicago (a distance of 163 miles) in six hours. I have had a passenger train that was due to leave Galesburg at 12.40 midnight (and it is due to leave at about that time now), and I have had four or five stock trains that would pull up from the yard for Chicago, and could not go because of that passenger train. They would have to wait until that passenger train was due to go, in order to keep out of its way. They had no rights, you know, against that passenger train. I, myself, have held that passenger train an hour at Galesburg many a time, and let four, five, and six stock trains go right out of town on that pas-

senger train's time and go to Chicago, and clear the passenger train's time.

Mr. KENNEDY. What I was going to ask you was this: What time do your local passenger trains average over your lines?

Mr. RICE. From 22 to 25 miles an hour. We try not to have a local passenger train on our local minor branches or on our principal branches faster than 24 or 25 miles an hour.

Mr. STEVENS. Is that the running time?

Mr. RICE. That is the time from one terminal to another.

Mr. STAFFORD. That time is increasing with the years and the improvement of service on the lines; is it not?

Mr. RICE. No; it is not. I am talking about branches.

Mr. STAFFORD. Oh! I mean on the main line.

Mr. RICE. Oh, yes; yes.

Mr. KENNEDY. That is pretty good time for a local passenger train on a branch road—22 miles during the whole run, including stops.

Mr. RICE. Yes; but it is not as fast as the people would like to have it.

**STATEMENT OF MR. W. H. NEWELL, OF ROCKY MOUNT, N. C.,  
REPRESENTING THE ATLANTIC COAST LINE.**

Mr. NEWELL. Mr. Chairman and gentlemen, I just want to say a word or two about this proposed minimum schedule of 16 miles per hour.

Mr. WANGER. You represent what road?

Mr. NEWELL. The Atlantic Coast Line, sir. I feel quite sure that you gentlemen, and many of our friends among the stock growers and stock shippers do not understand the thousand and one troubles we have in making schedules. I have been making schedules and handling trains in the transportation department generally for over thirty years continuously. In order to make a schedule of 16 or 18 miles an hour, taking into consideration the question of arbitraries (and what we call "arbitraries" are water stations, coal stations, railroad crossings, and various other things that we have to contend with), we have got to run from 30 to 35 miles an hour. That is a fact.

I just want to cite you one instance that came under my observation last night. I feel that I am quite familiar with the details of this subject, because I was born and raised on the railroad, and it seems to me I have been in almost every department connected with operating. In passing through the city of Richmond last night I met my general yardmaster, and I asked him this question: "How many cars of stock are you going to get to-night from the stock yards?" He said: "Six." I asked: "What time will you get them?" He said: "I will get them at 6 o'clock." "When will you forward them?" "I will forward them on our regular package train, what is known as the 'carded train,' at 9 o'clock."

I want to explain that. The "carded train" is our high-class freight train. We group three commodities, especially, viz, stock, perishable freight of any class, and merchandise freight. Those commodities are handled on those trains and are given the preference, and the service really ranks next to the passenger service.

The six cars that he forwarded went to six different destinations. They were all cut off at one place; that is, one distributing point, Rocky Mount. We have various branch lines there in almost every direction. From Richmond to Rocky Mount, a distance of 125 miles, the schedule is five hours and forty-five minutes, or practically six hours. We would arrive at Rocky Mount at 3 o'clock in the morning. We would have one car of stock going to A, another one to B, another one to C, and so on. The local schedules from that particular distributing point are arranged, of course, according to the local conditions, varying from perhaps 10 o'clock in the morning to 11 o'clock, 12 o'clock, and so on, up to possibly 3 o'clock in the afternoon. As a result some of those cars would remain on the sidetrack at that point for several hours. They would, perhaps, not get to their destinations in less than twelve or fifteen hours from the time they started from the original point or from the connection, and would not average 6 miles an hour.

You understand that the conditions are practically the same on the little branch lines. We have a great number of them; and that will hold good all the way from Richmond to Tampa, Fla. If we were required to make a minimum of 16 miles an hour on those little branch roads, knocking us out in that way, where we have comparatively little traffic, it would be absolutely necessary to run a great number of special trains to properly care for one car of stock. I am sure that would be very unreasonable; and I know you appreciate that.

I simply mention that as an illustration. That would occur all the way down the line. There are many other objections to this bill. Among them is that the law now requires railroads to see that stock is fed, watered, and rested after having been confined in the car for a certain length of time. You understand what that is. Speaking for most of the roads in the South (I am more familiar with the roads south of Washington than with those elsewhere), I do not know of any department of railroading that is more thoroughly lined up than that of the movement of stock, unless it is the passenger service. Mr. McKaig, who spoke here a few moments ago very intelligently, explained that matter. The management and all the railroad people want to carry out this law. But, unfortunately, we can not have all of our men perfect. Therefore, the law may be violated sometimes. At the same time, we are doing everything in the world we can to keep from violating it. For the Lord's sake, do not put additional restrictions on us that will not help the matter from a humanitarian standpoint, but that will result in more expense and more fines for us. We are now trying to do everything in the world that we can. And I feel sure that after considering the matter you will not favorably report this bill, for it would be an injustice to us.

Mr. STEVENS. Let us find out about that. Suppose Congress should think it was necessary in the interest of the whole country to pass this bill, and that it should operate rather harshly against your lines. Let us see what would happen. Suppose those six cars of stock left Richmond, and this bill were in effect, and you took them down to Rocky Mount; then what would you have to do to comply with this law?

Mr. NEWELL. We would simply have to run a special train, sir.

Mr. STEVENS. You would run six special trains, would you—one with each car of stock?

Mr. NEWELL. That would be the general principle. I do not say that we would do that in every case. We might possibly have some extra trains going, but that would be the principle.

Mr. STEVENS. Could you unite with that stock mixed trains of other merchandise in those six directions and make this time?

Mr. NEWELL. That would necessitate additional service; that is all. Of course, it is entirely practicable to do that, but it is additional service.

Mr. STEVENS. Yes. If you had to render that additional service, what would you do?

Mr. NEWELL. I do not know that I quite understand what you mean.

Mr. STEVENS. Would you raise your rates?

Mr. NEWELL. Oh! I do not suppose we would be allowed to raise the rates. If the rates were commensurate under those conditions, I should say that there would not be any especial objection to doing that.

Mr. STEVENS. If the shippers of stock paid you high enough rates, then, you could do it, could you, without any particular objection?

Mr. NEWELL. I should say yes, sir, on general principles.

Mr. STEVENS. Do you consider that the rates you now get would warrant your doing that?

Mr. NEWELL. No, sir; we do not.

Mr. STEVENS. Then you would try to raise your rates, would you?

Mr. NEWELL. If this bill should become effective, I should say rates should be raised, by all means, to cover the matter.

Mr. STEVENS. Then that would either increase the price of stock to the consumer or decrease the tendency of the farmers to raise stock?

Mr. NEWELL. Yes, sir.

Mr. STEVENS. That would be the effect, would it?

Mr. NEWELL. Evidently.

Mr. STEVENS. How long have you been in the traffic business?

Mr. NEWELL. Thirty-four years.

Mr. STEVENS. Have you watched the course of development of different lines of business along your road?

Mr. NEWELL. Yes, sir; generally.

Mr. STEVENS. If we had such a law as this in effect, what would the tendency be—to increase the raising of stock along your lines, because you gave them a better market and got them to market quicker and in better condition, or to decrease the raising of stock, because you might be obliged to charge them higher rates? What do you think would be the result?

Mr. NEWELL. On account of the peculiar conditions that exist with us I do not know that it would materially affect the business, sir, for the reason that in our country we move animals, like horses and mules, entirely from a commercial standpoint, and cattle are shipped simply to near-by points for slaughter. It certainly would not be any encouragement that I can think of to the shipper.

Mr. STEVENS. Then it would not make much of any difference along your line, would it?

Mr. NEWELL. Not materially.

Mr. WANGER. Is Rocky Mount a feeding point?

Mr. NEWELL. Yes, sir.

Mr. WANGER. You can rest these cattle at that point, then?

Mr. NEWELL. Oh, yes, sir.

Mr. WANGER. Until the connecting train is to depart?

Mr. NEWELL. Yes, sir; they could be rested there all right. But, you see, as a rule, we can get them to destination before the twenty-eight-hour law intervenes—before they need rest.

Mr. WANGER. The entire distance?

Mr. NEWELL. Yes, sir.

Mr. WANGER. This case of the six cars going to six different points was somewhat unusual, was it not?

Mr. NEWELL. No, sir; it is not unusual. We get cars for Norfolk and Richmond and Wilmington and Columbia and Charleston and all of those points.

Mr. WANGER. What I mean is, it is a little unusual that there should be just six cars.

Mr. NEWELL. Oh, that particular number—yes, sir. That was unusual. I simply cite that as an illustration; that is all.

Mr. WANGER. It occasionally happens that there are six cars and they are all for one point, does it not?

Mr. NEWELL. Yes, sir.

Mr. WANGER. That also happens?

Mr. NEWELL. I suppose it would happen; yes, sir. That is reasonable.

Mr. WANGER. That is all.

Mr. NEWELL. I just want to say one other thing. I want to emphasize the fact that the roads in the South give stock special attention in the way of dispatch; and if we should be required to conform to a sixteen-hour minimum, it would work a very great hardship upon us. Shipments of stock that do not average a minimum of 16 miles per day are detained through causes over which the railroad company has no immediate control. If they are detained, it is because of unavoidable conditions or circumstances. Ordinarily we make it. We want to make it; we are trying to make it.

Mr. ADAMSON. You do not have to deal with many full train loads of stock, do you?

Mr. NEWELL. None at all, sir.

#### STATEMENT OF MR. C. C. PAULDING, ON BEHALF OF THE NEW YORK CENTRAL RAILROAD COMPANY.

Mr. PAULDING. Mr. Chairman, there are gentlemen present here from several of the eastern roads—the Pennsylvania, the New York Central, and other roads—to inform the committee about the conditions on those roads, and how the passage of this bill, if it were passed, would affect them. But, in view of the testimony that has been given to-day, this seems to be largely a western proposition—that is, a proposition applicable chiefly to the railroads west of the Mississippi River. While I do not represent any of those railroads, I am sure that they would like to be heard upon the bill. I will ask, therefore, if a day will be set when the Union Pacific, the Oregon Short Line, and the Chicago and Northwestern, those being the roads which have been mentioned here to-day, can be heard as to how the passage of a bill of this sort would affect them?

Mr. STEVENS. If you can tell us how an act like this would affect your eastern lines, you had better tell us.

Mr. PAULDING. Oh, yes, sir; we have the men here to do it. But I wanted to ask at this point if we would have an opportunity to have the western men here?

Mr. WANGER. We will consider that.

Mr. STEVENS. Hearings are fixed for practically every day next week, so that right now we could not fix any day.

Mr. NEALE. Would you like to hear from some of the eastern railroads—the Pennsylvania, for example?

Mr. STEVENS. I think you had better tell us how such an act as this would operate on your lines.

Mr. STEVENS. We will call Mr. Trump, then.

Mr. ADAMSON. Mr. Chairman, I want to ask one of these gentlemen a question.

Mr. GOODING. I would like to ask the committee whether it will be possible, after the western roads, or any of them, give their testimony for the stock interests of the country, to make other remarks or file a brief with the committee in reply? According to the statement of the gentleman from the Burlington road, it would seem to me that the objections made could be very easily gotten around. The bill could be so drawn and drafted as not to affect these roads. I should like to ask, therefore, if we will be allowed to file at least a brief on the subject?

Mr. STEVENS. Oh, yes; we shall be very glad to have you do so.

Mr. GOODING. I mean after the testimony of the railroad people is all in.

Mr. STEVENS. Oh, yes; but it will be to your interest to put it in speedily, and not delay about it.

Mr. GOODING. Yes.

Mr. ADAMSON. Mr. Chairman, I want to ask one of these lawyers a question; and I would just as soon take a shot at Mr. Paulding as anybody else. If he can not answer it, it will at least serve to bring the matter to the attention of the committee, and perhaps they can answer it in their deliberations.

There are different conditions of traffic in different parts of the country and over different railroads. There are certain roads over which large shipments of cattle move in solid, long trains, and many of them. There are other sections, like the one represented by the gentleman who has just taken his seat—the Atlantic Coast Line—where there is not much cattle; only an occasional car, and sometimes not full cars.

Mr. PAULDING. Yes, sir.

Mr. ADAMSON. Is there any way, without unjust discrimination, in which we can arrange for the accommodation of the business under the different conditions prevailing in those different sections?

Mr. PAULDING. There is no way; no, sir; because the conditions differ so in different parts of the country, and differ so upon the different roads. If we take the Pennsylvania and the New York Central, for instance, as to cattle or live-stock traffic, both of those roads are terminal roads. A very large part of the live-stock traffic over the New York Central is export traffic, and comes through to us. We originate upon the lines of our road very little live stock.

Mr. ADAMSON. Unless you can so shape the law as to accommodate the different sections and roads with proper regard to the different conditions, will it not inevitably result in less accommodation



and higher charges on the part of the roads in the sections where there are only few and small shipments?

Mr. PAULDING. I do not see how it can result otherwise, Judge Adamson; because what would be fair in this regard to a road like the New York Central would not be fair to a road, for instance, west of the Mississippi River, which had a long mileage and few tracks.

Mr. STEVENS. But, Mr. Paulding, could we not give a large jurisdiction to the Interstate Commerce Commission to make operating requirements that might meet the different situations?

Mr. PAULDING. I think, perhaps, if general jurisdiction were given to the Interstate Commerce Commission, Mr. Stevens, without naming in the law any specific minimum, that might remove that objection.

An average minimum of 16 miles an hour means a great deal. If we take a through shipment of live stock over the lines of the New York Central, coming through to Boston for export, for instance, it goes to West Buffalo or to East Buffalo and is fed. From there a jump is made of 300 miles to West Albany, where there is another feeding station. From there another jump is made of 200 miles to Boston, where the stock is delivered for export. But it might be very difficult to average 16 miles an hour from Buffalo to Boston, because of the fact that at Boston there are 13 miles of terminals, and when those cars of stock arrive at the western end of those 13 miles of terminals the delay begins. We might have run the shipment over the main line from Buffalo to West Albany at a rate of 40 miles an hour—which is very often done, I am told, when the trains can use the passenger tracks. We might have run it over the Boston and Albany at a rate of 20 to 25 or 30 miles an hour—a rate which, I am told, is very often reached. But when we get to the terminal at Boston and have those 13 miles of yard to go through—a congested yard at that—it might take twelve hours to get that stock over the 13 miles or the 11 or 12 miles which might be necessary to be added in order to deliver it, on account of the congested condition of the yard and the fact that so many switching movements have to be made. Trains have to be broken up, crews have to be brought out to attend to them, and all the thousand and one things that are necessary in yard operation have to be done. That is where an average would be an unjust thing, sir.

Mr. STEVENS. The point I asked you about was this: Could not some measure be framed giving the Interstate Commerce Commission such general authority that they could make a different rule wherever necessity required?

Mr. PAULDING. Yes, sir; I think a general measure could be framed giving them general authority.

There is one thing I should like to say right here about violations of the present law. The New York Central Railroad has been prosecuted and convicted and fined in a number of cases. In every one of those cases, so far as I am informed, the violation of the twenty-eight-hour law occurred, although the car or cars of stock concerned had been on our line in no instance more than four hours, and in many instances less than an hour, on account of the operation of the law and the way it is drawn.

Mr. ADAMSON. Mr. Paulding, I want to ask you another question of general interest. The representative of the Atlantic Coast Line

was just now asked by Mr. Stevens a question which had in view the ultimate consumer—a gentleman who is very rarely referred to in these days, you know. I want to ask you if there is not a very wide margin between what cattle are worth after both the cattleman and the railroad part with them, and what they bring after the packer and the butcher get through with them—what is charged to the ultimate consumer?

Mr. PAULDING. I know what I pay for the beef, Judge Adamson. That is all I know about it.

Mr. WANGER. Do you think that would be affected by the speed-rate law?

Mr. PAULDING. I should not dare answer as to that, Mr. Wanger.

Mr. ADAMSON. If you could just pool the earnings of the cattleman and the railroad and the packer and the butcher, you might leave the packer and the butcher rich and still raise the profits of the railroad and the farmer.

Mr. PAULDING. You might run up against the Interstate Commerce Commission's law against pooling, though.

Mr. ADAMSON. If you are going to fix up a pooling arrangement, I should like to cover that.

Mr. WANGER. Do you desire to present anybody else?

Mr. NEALE. We should like to present Mr. Trump.

Mr. WANGER. We shall be very glad to hear Mr. Trump.

**STATEMENT OF MR. M. TRUMP, GENERAL SUPERINTENDENT  
OF TRANSPORTATION OF THE PENNSYLVANIA RAILROAD  
LINES.**

Mr. TRUMP. Mr. Chairman, the conditions on the Pennsylvania Railroad are practically the reverse of those stated by Mr. Rice. We originate very little stock, but we distribute quite a lot. Our stock comes to us at Pittsburg, which is a market. The stock sometimes lies there for days before it is sold, and practically starts out from that point as a new shipment. We have from that point regularly arranged stock schedules (one at noon and the other at midnight) running to Philadelphia and to New York. Our time from Pittsburg to Philadelphia is twenty-three hours, including yard delays—an average speed of about 16 miles per hour. The time on our New York trains is twenty-six hours—an average speed of about 17 miles an hour. Those schedules are arranged to suit the markets and to suit the requirements of the stock shippers, and have been varied from time to time to suit their convenience. So that we are in a peculiar position to be able to conform to this proposed bill so far as those through movements are concerned. But the provisions are so general that we would be fined—I will not say 500 times a day, but certainly a number of times per day—with our local movements.

For instance, if one of our connections puts on the receiving track five cars of stock, to go a distance of 8 miles, we must get it there in thirty minutes, and we have not the necessary power and crews and so on available at that place. So, unless we know that that stock is going to arrive there, and get an engine to move it specially from that point for that 8 miles, we are going to be fined \$500. That is where we think uniformity in a law like this is going to cause a great deal of injustice. Our stock is handled as a preference move-

ment. There is nothing handled faster on the road except our passenger trains. But when it comes to this local stock, which, for instance, is going to Baltimore, it must leave the train at Harrisburg. It is distributed along at York and various places. We get small quantities of stock at Buffalo and Erie, which come down on trains which are principally run on fast-freight schedules. They come into Harrisburg, and there they are broken up and distributed. On all such movements as that we could not conform to a 16-mile-per-hour speed, taking in account the difficulty in making our connections. So far as our through movement is concerned, the law would not affect it.

Mr. WANGER. What rate of speed do your fast-freight trains make?

Mr. TRUMP. Our fast freights? They are run practically on the same schedules—17 to 20 miles per hour, including yard delays.

Mr. STAFFORD. Has the Baltimore and Ohio Railroad any faster schedule for fast freight?

Mr. TRUMP. I do not think so. We all make about a third-morning delivery in Chicago, which is our fast merchandise business westbound, and have a similar service eastbound.

Mr. WANGER. Are there any other questions?

Mr. TRUMP. That is all I have to say.

#### STATEMENT OF MR. C. W. GALLOWAY, SUPERINTENDENT OF TRANSPORTATION, BALTIMORE AND OHIO RAILROAD.

Mr. GALLOWAY. Mr. Chairman and gentlemen, as I understand this bill, it does not make any provision for whether your railroad is equipped with single track, double track, three tracks, or four tracks. Speaking for the Baltimore and Ohio, I think we distribute more stock than we originate. We do originate some stock through the Shenandoah Valley and through West Virginia. Furthermore, as I understand it, the bill requires an average speed of 16 miles per hour regardless of the conditions under which, from absolute necessity, you must collect that stock. For instance, take the country through the Shenandoah Valley: We will distribute there in connection with the Southern Railway probably 40 cars for stock on a specified day, usually to reach the market on Monday morning. We will start an engine out at the south end to pick up the stock that is loaded on our line, deliver it to the Southern Road, and they will go along and pick up stock on their line. They deliver that train back to us at Strasburg Junction, and we are ready to move it immediately. There is not a single thing on that train but stock, and there is not a single bit of work done but picking up that stock. We take it to Brunswick, where we put it in the train for Baltimore or for the Union Stock Yards. The average speed of that train from Brunswick to Baltimore is a little better than 17 miles per hour. But when we add the length of time it took to collect that stock through the Shenandoah Valley to our total running time we have an average of somewhere around 10 or 12 miles an hour.

The same condition obtains in West Virginia, where we collect cattle from 10 or 12 stations. At times we will arrive at the station with a crew doing nothing but collecting cattle. I have known of instances where the stockman had not arrived, and by the time the crew was ready to go he would turn up with his cattle, after having driven them some 10 or 12 miles and probably having had his own

troubles in getting there. We would wait for him. We would come to the junction of the main line, where we would have a train that would be making 18 miles an hour. If we add the time consumed in picking up that stock to the total running time of our main-line train, we have very materially reduced the average below 16 miles an hour. The same condition would prevail on a special schedule that we have from Chicago to New York, or from Chicago to Baltimore, for export cattle, which would give us an average speed of 18 miles an hour. We would put on that train at the junction point the cattle collected along the branch line, and our average would be reduced. As I understand this bill, that time would be added to the total time the stock was in transit after having been as-embled into a train.

Some mention was made of tonnage trains, and I got some enlightenment on that subject that I had never had before, to the effect that a railroad does not care how slowly it moves its trains. Tonnage is all right, and is properly used for slow freight, and I think all well-regulated railroads have a tonnage rating that is automatic in its application as regards the temperature which may exist at the various periods. But when it comes to important freight like stock, and what we call quick-dispatch freight (that is, high-class merchandise), the tonnage rating is not applied in the sense that it is applied to what we call the extra trains or the heavy freight. Our rule has been that we limit a fast freight train to 40 loads. We will run a solid stock train and take 30 loads. But if we are required to fill out a stock train, we fill it out with high-class freight—freight that will stand speed.

Another point where we could not comply with a 16-hour law is in distributing cattle that may go to points south via Potomac Yard, over here at the south end of the Long Bridge. It is 54 miles from Brunswick to Potomac Yard. It would require about six hours to make the run and get through Washington, through the density of the passenger traffic, around through our Alexandria branch, through the Virginia avenue tunnel, and around over the line that feeds the terminal from the south end. Our speed would be less than an average of 16 miles per hour, notwithstanding the fact that we move whenever there is an opportunity on the track to move.

Mr. WANGER. About what would your speed be, under the conditions you have just named, at that point?

Mr. GALLOWAY. Do you mean going south? About 9 miles an hour. That is what the average would be, notwithstanding the fact that we may have run those cattle 30 miles an hour. For 21 miles of the line we would probably run it at 30 miles an hour; but we can not get through these heavy traffic centers at that rate where there are so many trains.

With us stock is next to passenger trains. We do not hesitate, however, if we want to fill that stock train out to a speed that can make the schedule, to fill it out with high-class freight, such as meat or fruit or any high-class merchandise that will stand speed. We are not accustomed to filling it out with rails or heavy freight that we do not desire to run so fast. Of course, there is other traffic that has to move besides cattle. We have lots of things to contend with in operating a railroad. If we only had that one train to operate, I guess we would get probably any speed that you wanted. But we have other things to contend with; and you may get a high speed at

certain points that is reduced by conditions that you can not control at other points.

Mr. STAFFORD. The Baltimore and Ohio is a single-track road, is it not, generally speaking?

Mr. GALLOWAY. The Baltimore and Ohio is a double-track road. We have a double-track road from Philadelphia to Chicago Junction; and about 60 per cent of the Chicago division is double track. The Southwestern line is double track for 389 miles, to Grafton, and then it is a single track, with sections of second track.

Mr. STAFFORD. This bill would be more difficult of enforcement on single-track and partially double-track roads than on the complete double-track and more-track roads?

Mr. GALLOWAY. In my judgment the bill is almost impracticable on a single-track railroad.

Mr. STAFFORD. The roads in the far West and the grain States are largely single-track roads?

Mr. GALLOWAY. Yes, sir. I got the impression to-day that when you went west you found there was not any effort made to move anything. But I was at the coast a few years ago on a limited passenger train on a western line. I had been timing the train, and on one or two sections of the track I found that we had reached a speed of 82 miles an hour. This was on the Denver Limited. To my surprise I passed two stock trains going in the same direction, but on the opposite track. I thought that was pretty fine railroading, although I got the impression to-day that in the West they do not do anything. I think that is trying to get the stock over the road. I imagine that stock must have been running 40 or 50 miles an hour. So, notwithstanding the fact that we get high speed out of the stock trains at certain points, when you come to the average conditions that you can not control it is pretty hard to maintain the limit that this bill provides for. And as I say, on single track I judge it would be almost impracticable, unless you had nothing else to move.

Mr. KENNEDY. Do you think a minimum limit of 10 miles an hour could be maintained?

Mr. GALLOWAY. Yes, sir. I also want to add that the disposition of all operating officers is to move their traffic as rapidly as they can. That is what you measure your efficiency by. The higher average mileage you get, the greater your efficiency is; and you do not get high average mileage by letting trains drag over the road. Some of the testimony that has been offered here has been different from my experience.

Mr. WANGER. Are there any other questions? If not, we are very much obliged to you.

#### STATEMENT OF MR. G. P. BRADFIELD, OF BUFFALO, N. Y., REPRESENTING THE NEW YORK CENTRAL RAILROAD COMPANY.

Mr. BRADFIELD. Mr. Chairman, Mr. Paulding, of our legal department, seems to have covered pretty thoroughly the matter of how stock is handled on the New York Central. He did not mention, however, the stock that originates on our line. There is very little of it, but it comes from a single-track branch, say, a distance varying from 75 to 100 miles, before it strikes the main line.

Mr. WANGER. What branch is that?

Mr. BRADFIELD. That is the Rome, Watertown and Ogdensburg. That is one of them. There is a little coming from what we call the Canandaigua and Batavia branch. There might be a little coming from the Auburn branch, but there is very little of it. There is, however, enough of it so that if we had this 16-miles-an-hour law we would certainly be fined once or twice a week. Those shipments are usually made once or twice a week and are mostly for the local markets.

Mr. WANGER. What rate of speed is actually maintained?

Mr. BRADFIELD. We are in just about the same fix that these other gentlemen have mentioned. We could not pick up stock on these branch lines and make over 8 or 10 miles an hour with it, because we have very little of it, and on account of the stopping and loading. Oftentimes there have to be two or three cars loaded at one station, and the chutes are so arranged that the shipper can only load about one car, and then he has to wait for the engine of the train to come and place the next car, which, of course, delays the movement of the stock that is already picked up. I have known of instances where the engine would have to wait for the loading and for what they call the cooping of the cars. There would be, perhaps, sheep and hogs and calves all on the same cars—small-lot shipments; and it would all come under the head of stock, as I take it.

With our through stock, such as is delivered to us by our connections, we make fairly good time. We aim to make 16 miles an hour. We do not always succeed in doing it. We sometimes make quite a little better than that. But there is a lot of stock delivered to within, say, 7 or 8 miles of our stock yards. We can not move that from the point where it is delivered to us to the yards short of anywhere from one to three hours, on account of the congested conditions in that territory. Further than that, it may come to us at a time when we are not prepared to handle it right on the spot. We have to send an engine 7 or 8 miles to it. We will get two cars, say, at 10 o'clock in the morning; we may get two cars at 11 o'clock in the morning; perhaps one or two cars at 2 o'clock the next noon, and so on. But that stock, as a rule, goes to the yards, is watered and fed, and is what is called "sale" stock. It is usually resold there, and then reshipped later—maybe not for two or three days. Those are the cases, I think, that Mr. Paulding had reference to, where we are fined for exceeding the twenty-eight-hour limit. The time was practically up when the stock was delivered to us, but we could not get it to the yard short of two or three hours—just enough to make us responsible for it.

I do not know of anything else that I can say to you, unless there is some question you would like to ask me about it. I do think this, though, from an operating standpoint: I have been in the operating service for something over thirty years, and I do not believe it would be wise for any law to be passed directing the railroad companies as to what speed they should average with their traffic, either stock or any other traffic. I may be entirely wrong, but that is my judgment. It means maintaining an average speed of 16 miles an hour, and I know this to be a fact, because we are practicing it practically every day. We have to run our stock trains 35, 40, or 45 miles an hour wherever we can, because there are so many places where we can not run them fast, and there are so many delays that have already

been mentioned, such as coaling your engine en route, watering your engine, changing engine and crews, getting through the congested yards, and getting down over territory like the Hudson division of the New York Central, where sometimes they lie for two and three and four hours on a side track waiting for high-class passenger trains. They could not make 10 miles an hour to save them down there.

Mr. KNOWLAND. Is it detrimental to stock to run faster than 30 or 40 miles an hour?

Mr. BRADFIELD. I should say that would depend somewhat upon the kind of track you have. If you have a good, smooth rail and a good roadbed, I do not think we hurt the stock in running 30 or 40 miles an hour. We seldom do that unless we do it on our passenger tracks. We would not like to go at that speed on the freight tracks, because they are not as smooth-running tracks as the others.

Mr. KENNEDY. It would depend a good deal on the care with which the engineer started and stopped his train?

Mr. BRADFIELD. Yes, sir; especially stopping. He can not start very fast, anyhow. He might jerk the first car or two, but he has to start off slowly. But he can stop pretty quickly sometimes.

Mr. WANGER. Are there any questions? That is all, Mr. Bradfield.

#### STATEMENT OF MR. J. C. TUCKER, OF NEW YORK CITY, REPRESENTING THE ERIE RAILROAD.

Mr. TUCKER. Mr. Chairman, the Erie Railroad is peculiarly situated, so far as this bill is concerned. Practically all of the stock we handle originates on the railroad in small lots. It is gathered in from main-line divisions and from side-line divisions, of which there are a number. The method of collecting the stock on the side-line and main-line divisions is to pick the stock up in local trains—pick-up trains or way-freight trains—and assemble it at the terminal for a through main-line train. The stock delivered from connections is, of course, sometimes, and in fact frequently, delivered when we have no through main-line trains upon which to take it. However, the main object is to assemble the local stock as it is loaded to a terminal point, where it can be made up in a through train for New York, that being the principal point of destination.

The operating conditions are these: We have approximately 1,000 miles of road from Chicago to New York. Approximately 500 miles of that distance is single track. Of course it passes through a rather rolling country where the grades are not bad, and yet they are not favorable. We have many miles of 1 per cent grades or better. The division terminals between Chicago and New York are occasionally congested, and there are many operating reasons on the long haul why we could not consistently maintain an average minimum rate of speed of 16 miles per hour. We are doing everything possible to live up to the strict interpretation of the present law. We are endeavoring to move our stock with promptness, and the stock is generally moved in what we call our "fast-freight trains" from the terminal points. We rarely run a stock train; very rarely. Almost all of the shipments of stock in the manifest or fast-freight trains are carried in from 5 to 7 or 8 cars. Occasionally there are more than that, possibly 12 or 15 cars. But rarely, as I said before, do we have a full train of stock from Chicago to New York, or from Buffalo to New York.

Mr. WANGER. These 5' to 15 cars are joined with how many other cars to make a train load?

Mr. TUCKER. The rating of our manifest trains of course varies on the 12 main-line divisions between Chicago and New York on account of the grades. On some divisions we will handle more than on others. For illustration: In the West we will probably haul on the manifest trains 33 to 35 or 38 or 40 cars where the grades are favorable. On the divisions where the grades are not favorable we will handle from 32 to 33 or 34 cars. On the New York division, from Port Jervis to the Jersey City terminal, of course we have heavy passenger traffic all through the territory; and it frequently occurs that our manifest trains which have a few cars of stock in them are delayed on account of the large number of passenger trains, particularly during the morning rush hours. However, we endeavor to keep a very close check on all of those trains approaching the terminal. We have frequently cut the tonnage down, say, as far back as 200 miles out of the terminals, so that we could make the market, for illustration; and things of that kind are done. It depends entirely upon the conditions. But it would be almost impossible for us to maintain a fixed minimum rate of speed under our operating conditions of so much single track, etc.

As I said before, we are doing everything we can to comply with the present law; and, so far as I personally know, we have not had any complaints of any consequence as to the manner of the handling of the stock.

Mr. STAFFORD. What is the average time of your through freight trains from New York to Chicago?

Mr. TUCKER. About sixty hours; from fifty-seven to sixty hours. While we do make on our manifest trains from 12 to 15 and 16 miles per hour (and of course we increase that speed where we can, where the conditions are such that we can), we have to run faster, and in fact as high as 40 miles an hour, to try to get the train to its final destination, which is New York.

Mr. PAULDING. That is all we have to present this afternoon, Mr. Chairman.

(The committee thereupon adjourned until to-morrow, Saturday, February 12, 1910, at 10 o'clock a. m.)

(The chairman presented, to be inserted as a part of the record of the hearing, the following letter from the Secretary of Agriculture and copies of certain state laws in relation to the transportation of live stock:)

DEPARTMENT OF AGRICULTURE,  
OFFICE OF THE SECRETARY,  
Washington, D. C., January 31, 1910.

HON. JAMES R. MANN,  
*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

SIR: Receipt is acknowledged of your letter of January 25, 1910, inclosing a copy of H. R. 19041, entitled "An act to prevent cruelty to animals while in transit by railroad or other means of transportation from one State or Territory, or the District of Columbia, into or through another State or Territory, or the District of Columbia and repealing sections 4386, 4387, 4388, 4389, and 4390 of the United



States Revised Statutes," and requesting the views of this department regarding the bill.

If enacted into law, the bill will require, in effect:

1. That common carriers subject to the present statute shall maintain on all trains transporting live stock an average minimum speed of not less than 16 miles per hour. (Sec. 3.)

2. That if, after a hearing, the Interstate Commerce Commission should decide that any carrier can not maintain a rate of not less than 16 miles per hour on stock trains, owing to adverse physical conditions, the said carrier may thereafter maintain on stock trains a minimum rate of not less than 12 miles per hour, over that part of its system on which the adverse physical conditions obtain. (Sec. 4.)

3. That any common carrier subject to the act which fails to maintain a minimum speed of 16 miles per hour, as provided in section 3, or a minimum speed of 12 miles per hour, as provided in section 4, shall be liable upon conviction, for each shipment so delayed, to a penalty of not less than \$100 or more than \$500. (Sec. 5.)

4. That the penalties therein created shall be recovered by civil action in the circuit or district court holden in the district where the offense was committed. (Sec. 6.)

For your information in this connection I inclose a copy of the present act in the form it would assume should this bill become law.

As you are perhaps aware, the original act of Congress to prevent cruelty to animals by common carriers in the course of interstate transportation was passed by the Forty-second Congress, third session, and approved by the President on March 3, 1873 (17 Stat., 584). This act was incorporated in the Revised Statutes of the United States, first edition, as sections 4386 to 4390, inclusive. The present statute, commonly known as the "twenty-eight-hour law," supplemented the sections of the Revised Statutes, and became effective on June 20, 1906 (34 Stat., 607). Improved by Congress from time to time, as defects became apparent in its practical enforcement, the act to-day represents one of the most humane and effective pieces of federal legislation on the statute books.

I had not had occasion to consider the bill you sent me. It was drafted, substantially in its present form, by the solicitor of the department, in response to the request of the American Humane Association and the National Wool Growers' Association. At the time the draft was in preparation a very careful analysis was made of between seven and eight hundred alleged violations of the twenty-eight-hour law, then awaiting trial with a view of determining the average rate of speed maintained on stock trains. In a group of 42 cases against one road the average running time for such trains varied from 4 miles an hour for a haul of 364 miles, to 21 miles per hour for a haul of 977 miles, a very good rate of speed for a stock train. The average rate of speed maintained in all these cases was 9.5 miles per hour. In a group of 24 cases against another road the average speed maintained was 12.3 miles per hour, the actual rate varying from 1.8 miles per hour for a haul of 57.7 miles to 14 miles per hour for a haul of 545 miles. An examination of 22 cases against a third road shows that it maintained the rate of 5.4 miles per hour on an average. One of the big live stock carrying roads, at that time a defendant in 28 alleged violations of the act, maintained in these instances a speed of 3 miles per hour for a haul of 150 miles and 12.8 miles per hour for a haul of 480 miles, the average speed being 10 miles per hour. One of the most persistent violators of the law was then a defendant in 122 cases. It maintained an average running time of from 1.0 miles per hour for a haul of 108.5 miles to 15.6 miles per hour for a haul of 613.2 miles. Three other roads maintained an average of 6.4 miles per hour in 14 cases, 11 miles per hour in 15 cases, and 0.7 miles per hour in 166 cases. The average running time of stock trains in the seven or eight hundred cases examined was 9.4 miles per hour.

Recently there has been a very gratifying improvement in the conditions attending the transportation of live stock; the railroad companies generally are making sincere efforts to comply with the present statute. Nevertheless, while the law as it now stands is being substantially obeyed, and while neither pains nor expense is being spared in its enforcement, it is believed that more adequate protection would be afforded live stock in interstate commerce if a provision were incorporated in the act requiring carriers to maintain a reasonable minimum speed on all stock trains. It often happens, at the present time, that railroad companies comply rather with the letter of the statute than with the spirit; by unloading live stock frequently they keep within the law, but much

suffering is thereby inflicted upon the animals, to say nothing of the additional expense to the shippers, all of which could be avoided if carriers were required to move live stock more rapidly to destination.

The principle upon which the present statute rests is certainly sound—the principle that dumb brutes in a civilized nation should receive due care from common carriers in course of transportation. It is inherently right; it benefits the live-stock shipper and the consumer; and whatever benefits the shipper and the consumer must in the long run help the railroad company. The enactment of this bill would round out the present statute and emphasize the desire of Congress, as expressed therein, that live stock in transit should be properly handled; it would insure improved service for the shipper, and the consumer could be satisfied that live stock would reach the market in better condition. It is the logical development of the purpose with which the original act was passed. Then, too, as you have observed, provision is made that an opportunity for a hearing shall be afforded any carrier operating under conditions which apparently make it impossible to maintain the minimum speed required, and that the Interstate Commerce Commission shall have the power to reduce the minimum rate of 16 miles per hour, if it appear that, in fact, a given carrier is unable to maintain that speed.

Nor could it be said that Congress would be very far in advance of the state legislatures in enacting such a measure. The act of March 19, 1903 (chap. 144, Laws of North Dakota, 1903, p. 195), provides in effect that common carriers engaged in the transportation of live stock shall maintain on all stock trains within the State an average minimum speed of not less than 20 miles per hour. The act of April 4, 1905 (chap. 5, Laws of Nebraska, p. 57), provides in effect that it shall be the duty of stockyards companies to unload live stock within one and one-half hours from the time of arrival at the tracks connecting with the yards and the tender of the live stock to the company. Section 10606 (stock shipments, rate of speed) of the act of March 20, 1909 (Laws of Nebraska, 1909, chap. 96, p. 403), provides in effect that common carriers shall transport live stock at a minimum speed of not less than 18 miles per hour. The supreme court of that State, in *Cram v. Chicago, Burlington and Quincy Railroad Company* (122 N. W., 31), has declared this statute constitutional. The act of March 7, 1907 (chap. 276, Laws of Kansas, 1907, p. 448), provides in effect that common carriers shall transport live stock at a minimum speed of not less than 15 miles per hour. The act of April 10, 1907 (chap. 115, Laws of Iowa, 1907, p. 119), provides in effect that common carriers shall move cars of live stock at the highest speed consistent with reasonable safety, and that the board of railroad commissioners shall determine the speed at which live stock shall be moved. You will recall that the act of May 17, 1907 (Laws of Illinois, 1907, p. 264), provides in effect that live stock shall not be confined by a common carrier in any car longer than thirty-six consecutive hours, at the expiration of which time they shall be fed and watered. A California statute (Laws of 1905, chap. 512) prescribes thirty-six hours as the maximum period of confinement of live stock by carriers without unloading for food, water, and rest; the period of rest must be at least ten consecutive hours. The act of 1905 (Laws of Florida, chap. 51) makes twenty-eight hours the maximum period of confinement of live stock by carriers, and also provides a maximum of three hours for detention in the cars at destination. For your information I inclose copies of the acts or parts of acts mentioned.

As showing what has been accomplished under the existing statute, and as supplementing this letter in reference to the minimum speed measure, I inclose marked copies of the Report of the Solicitor for 1907, 1903, and 1909.

Very respectfully,

JAMES WILSON, *Secretary.*

[Laws of North Dakota, 1903, p. 195—An act regulating transportation of live stock.]

1. *Minimum speed to be maintained.*—It shall be the duty of every railroad, railroad corporation, railway company, express company, car company, and of every common carrier other than by water, by whatever name it may be called or by whomsoever operated and which is wholly or in part engaged in the transportation of any kind of live stock by railroad within or to or from any point in this State, to transport any and all such live stock so by it being transported, with the utmost diligence, and to maintain within this State in all trains so transporting any such live stock an average minimum rate of speed of not less than twenty miles per hour from the time any such live stock is

loaded upon or into its cars until such train reaches its destination, deducting only in the computation of such average minimum rate of speed such reasonable time as any such live stock may be necessarily delayed in unloading to feed, water, and rest and in feeding, watering, and resting and in reloading.

2. *Penalty for violation.*—Every railroad, railroad corporation, railway company, express company, car company, or common carrier other than by water, and the person or persons operating such common carrier as receiver, lessee, or trustee violating any of the provisions of section 1 of this act, shall be liable to the owner or owners of any live stock so being transported, in the sum of five dollars per car for each and every hour any car, wholly or in part loaded with any live stock, is detained beyond the time provided in said section 1 of this act, and, in addition thereto, every such railroad, railroad corporation, railroad company, express company, car company, or common carrier, or the person or persons operating any such common carrier as receiver, lessee, or trustee, shall be liable to such owner or owners of said live stock for all damages sustained on account of any such delay, to be collected in an action by such owner or owners in any court of competent jurisdiction in this State.

[Laws of Nebraska, 1905, p. 57.—An act to regulate the time consumed in unloading and yarding the live stock by stock-yard companies or persons.]

SECTION 1. *Unloading cars—time.*—It shall be the duty of all persons, corporations, or associations engaged in the business of operating a stock yard or yards, in the State of Nebraska, or receiving live stock for the purpose of being fed or sold at said yard or yards, to handle all live stock tendered at said stock yard by any railroad company with such expedition that the time consumed in switching and unloading and placing said stock in said yards shall not exceed one and one-half hours from the time of the arrival of the same at the tracks connecting with said yard and tender the same to said stock yard.

SEC. 2. *Penalty.*—Any person, corporation, or association violating the provisions of this act shall pay to the owner of said stock two and one-half dollars per car for each one-half hour delay or fraction thereof in excess of the one and one-half hours herein provided for placing said stock in said yard. Said sum to be collected as other debts are collected.

[Acts and resolutions of the State of Iowa, 1907, p. 119.—An act to define the duty of common carriers, etc.]

SECTION 1. *Duty of common carriers of freight.*—That it is hereby made the duty of all common carriers of freight within this State to move cars of live stock at the highest practicable speed consistent with reasonable safety and the reasonable movement of its general traffic.

SEC. 2. *Railroad commissioners to prescribe speed.*—In order to enforce the duty prescribed in section one, the board of railroad commissioners shall immediately and from time to time investigate the practice of the common carriers with respect to the movement of live stock; and if it ascertains at any time that the common carriers or any of them are not moving cars of live stock with the proper speed, then, upon notice to any such common carrier or carriers, the said board shall prescribe the speed at which and the conditions under which cars of live stock shall be moved within this State by any such carrier or carriers. The order shall specify the time at which it shall go into effect, which shall be as soon as, in the judgment of the board, the carrier or carriers affected can, with reasonable diligence, readjust its or their timetables. The power to prescribe speed and determine conditions for the movement of cars of live stock within this State is hereby expressly conferred upon the said board of railroad commissioners.

[Laws of Kansas, 1907, ch. 276, p. 448.—Concerning transportation of live stock.—An act to prevent delays, etc.]

SECTION 1. That all persons, firms, or corporations operating railroads as common carriers shall transport all live stock received by them for transportation within this State without delay, and shall transport the same in a period of time not less than one hour for each fifteen miles of the entire distance over which said shipment of stock is transported by rail within this State, unless prevented by unavoidable cause; provided the time consumed by stops for watering and feeding, occasioned by the requirements of law or the order of the shipper, shall not be considered a part of the time in which shipments are required to be made.

Sec. 2. Any common carrier which fails or refuses to transport such live stock at the rate of not less than fifteen miles per hour, as herein provided, shall be liable for all damages which may be sustained by any person on that account, which damages shall include the loss resulting from a depreciation on the market, shrinkage in weight of such live stock, the loss in time of shipper, his agent, or employee, and any extra expense occasioned thereby, and all other damages which are the approximate result of such failure, together with the costs in case suit is brought to recover the same, and a reasonable attorney's fee, fixed by the court on the trial of said cause. All other statutory and common-law remedies, in addition to the remedies provided herein, are hereby preserved to the shippers.

[Laws of Illinois, 1907, p. 264. An act to amend \* \* \* criminal jurisprudence.]

SECTION 1. No. 51. No railroad or other common carrier in the carrying or transportation of any cattle, sheep, swine, or other animals shall allow the same to be confined in any car more than thirty-six consecutive hours, unless delayed by storm or accident, when they shall be so fed and watered as soon after the expiration of such time as may reasonably be done. When so unloaded they shall be properly fed, watered, and sheltered during such rest by the owner, consignee, or person in custody thereof, and in case of their default, then by the railroad company transporting them, at the expense of said owner, consignee, or person in custody of the same; and such company shall have a lien upon the animals until the same is paid. A violation of this section shall subject the offender to a fine of not less than three dollars nor more than two hundred dollars.

[Laws of Nebraska, 1909, ch. 96, p. 403.]

SECTION 10606. *Stock shipments—Rate of speed.*—It is hereby declared and made the duty of each corporation, individual, or association of individuals, operating any railroad as a public carrier of freight in the State of Nebraska, in transporting live stock from one point to another in said State, in carload lots, in consideration of the freight charges paid therefor, to run their train conveying the same at a rate of speed so that the time consumed in said journey from the initial point of receiving said stock to the point of feeding or destination shall not exceed one hour for each eighteen miles traveled, including the time of stops at stations or other points: *Provided*, in cases where the initial point is not a division station and on all branch lines not exceeding one hundred and twenty-five miles in length the rate of speed shall be such that not more than one hour shall be consumed in traversing each fourteen miles of the distance, including the time of stops at stations or other points, from the initial point to first division station or other said branches. The time consumed in picking up and setting out, loading or unloading stock at stations shall not be included in the time required, as provided in this schedule: *Provided further*. That upon branch lines not exceeding one hundred and twenty-five miles in length live stock of less than six cars in one consignment, each railroad company in this State may select and designate three days in each week as stock shipping days and publish and make public the days so designated, and after giving ten days' notice of the days so selected and designated shall be required upon its branch lines to conform to the schedule in this act provided, only upon said days so designated as stock-shipping days.

[Statutes of California, 1905, ch. 512, p. 672.—An act to add a new section to the penal code \* \* \* relating to transporting cattle, \* \* \*.]

SECTION 1, 360b. Any officer, agent, or conductor of any company or person operating any railroad in this State, who, in carrying and transporting cattle, sheep, or swine in carload lots, confines the same in cars for a longer period than thirty-six consecutive hours, without unloading for rest, water, and feeding, for a period of at least ten consecutive hours, is guilty of a misdemeanor. In estimating such time of confinement, the period during which the animals have been confined without such rest on connecting roads from which they are received, must be computed. In case the owner or person in charge of such animals refuses or neglects to pay for the care and feed of animals so rested, the company or person operating such railroad may charge the expense thereof to the owner or consignee and retain a lien upon the animals therefor until the same is paid.

[Laws of Florida, 1905, ch. 51, p. 102.—An act to regulate the transportation of live stock and to provide penalties for the violation thereof.]

**SECTION 1.** That from and after the passage of this act, it shall be unlawful for any railway or other transportation company doing business in the State of Florida, to transport within the boundaries of the State of Florida, any cattle, hogs, or sheep, shipped from any point in such State to another point in such State, unless the same be transported in properly constructed cattle cars, which said cars shall be cleeled and provided with suitable slatted doors, as is usual in such properly constructed cars.

**SEC. 2.** All transportation companies which shall transport such live stock within the boundaries of the State of Florida, shall unload the same for feed and water at least once in every twenty-eight hours, and upon arrival at the destination of the aforesaid cars, said live stock shall be unloaded immediately by the company so transporting same, and no such car or cars loaded with live stock shall be kept standing on tracks of said railroad at said destination for a longer period than three hours before such live stock is unloaded: *Provided*, That such detention on tracks shall in no case result in preventing the unloading of stock once in every period of twenty-eight hours aforesaid.

**SEC. 3.** The transportation companies transporting live stock in the State of Florida shall be entitled to charge, as an extra compensation, the actual amount expended by them for feed and water of the aforesaid live stock while en route from the point of shipment to destination.

**SEC. 4.** All companies transporting live stock within the boundaries of the State of Florida shall provide for such transportation of such live stock properly constructed cars, as above set forth, of not less than thirty-four feet in length, and the railroad commission shall prescribe the minimum carload cars of such length.

**SEC. 5.** The railroad commission of the State of Florida shall have full jurisdiction of the provisions of this act, and enforce the provisions thereof, and make such rules and regulations governing such traffic as to them may seem meet.

**SEC. 6.** All transportation companies violating any of the provisions of this act, shall be subject to a fine of not over one thousand dollars for violation of any of the foregoing provisions: *Provided, however*, That the provisions of this section shall not apply to any violation of this act in which the delay or default was caused by accident or providential hindrance.

# HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

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## PART XVI

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WASHINGTON  
GOVERNMENT PRINTING OFFICE

1910

**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,**

**HOUSE OF REPRESENTATIVES.**

**JAMES R. MANN, ILLINOIS, *Chairman*.**

**IRVING P. WANGER, PENNSYLVANIA.**

**FREDERICK C. STEVENS, MINNESOTA.**

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**THETUS W. SIMS, TENNESSEE.**

**ANDREW J. PETERS MASSACHUSETTS**

## BILLS AFFECTING INTERSTATE COMMERCE.

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES,  
*Washington, D. C., Saturday, February 12, 1910.*

The committee met this day at 10 o'clock a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. The committee will be in order. You may proceed, Senator.

### STATEMENT OF HON. CHARLES J. FAULKNER, OF WASHINGTON, D. C.

Mr. FAULKNER. Mr. Chairman and gentlemen, I desire to submit a very brief statement in reference to H. R. 3064, known as "General Gordon's bill," in reference to claims against carriers.

I desire to call the attention of the committee to the language of the first section of that bill:

That all railroads, transportation companies, and other common carriers engaged in interstate commerce are required, and it is hereby made their duty, to acknowledge within ten days receipt of all claims which are presented or filed with said railroad or common carriers for overcharges on freight, or for loss, damage, or injury to same while in the possession of said carrier or connecting lines; said receipt to specify the number of said claim and date filed.

It seems to me that the first clause of that first section clearly brings it within the opinion of the Supreme Court in the employers' liability case, and renders the bill clearly unconstitutional for the reason that it applies to all railroads, and it applies to all claims upon railroads engaged in interstate commerce. It does not limit it, as required under the decision in that case (207 U. S., p. 463), to the interstate business of an interstate road, but embraces all claims against roads that are engaged in interstate commerce, whether that business should be intrastate or whether it should be interstate; and the blending of the two is the vice found in the employers' liability act to which I have referred in 207 U. S. It appears, therefore, that provision is clearly unconstitutional.

I think the further provision in the bill—that all claims against such railroads, whether they involve the business of intrastate carriers or interstate carriers—come within its provisions. It makes the carriers subject to the liabilities imposed by this statute, and refers to the first section of the bill as descriptive of the carrier embraced in the second section and renders the act unconstitutional.

The CHAIRMAN. As I understand you now, you are aiming to show that, so far as it relates to intrastate business, it is beyond the power of Congress?



Mr. FAULKNER. It is beyond the power of Congress; and the blending of the two in this way in the same section comes within the vice suggested and the construction used in passing upon the employers' liability bill.

The CHAIRMAN. You must remember that bill did not go through this committee.

Mr. FAULKNER. I am not discussing, Mr. Chairman, where the fault may rest with reference to the unconstitutionality of the employers' liability bill, but simply the principles adjudicated by the court in reference to that particular measure.

Further, Mr. Chairman, I recognize that the objection to the constitutionality of the first section of this bill could be obviated by amendments that would bring it within the terms of that decision, and consequently I thought it was only my duty, acting here as an attorney representing certain carriers, to call your attention to the unconstitutional feature of that section, so that if you desire to make any amendment to bring it within the decision as laid down by the Supreme Court you can do so.

But the next vice, which is in the second section of this bill, is one that is not the subject of amendment. The second section provides—

That said railroads and common carriers are also required, and it is made their duty, to pay all just and lawful claims within ninety days from the date of filing same with said railroads and common carriers, and failing so to do they shall be liable to the penalties hereinafter imposed.

The vice found in this section it is not within the power of Congress under any circumstances to remedy. It can not be remedied even under what you designate the police power, if you possess it, under the decision of the Supreme Court, nor could you remedy it by making a classification as provided for by this bill, for such classification has been denounced by the Supreme Court in similar attempts made by States to impose penalties upon carriers for failure to pay such claims within a given time. That question is so fully discussed in the case of the Gulf, Colorado and Santa Fe Railroad Company *v.* Ellis that it is hardly necessary now to dwell upon it.

The CHAIRMAN. Where is that?

Mr. FAULKNER. Page 150.

Mr. STAFFORD. Give us the volume.

Mr. FAULKNER. United States 165, page 150. The examination of that case will also show two things—that the Supreme Court held the Texas statute void which provided for the collection of a claim under \$50 with the addition of attorney's fees and penalties, should the railroad not pay promptly, on two grounds: First, that the classification made by the statute of a carrier or railroad from other citizens of the State was an unreasonable and improper classification for this purpose; and, secondly, that it was not in accordance with other provisions of the fourteenth amendment in regard to equality or due process of law. The latter view controls Congress under the fifth amendment as it affects the State under the fourteenth amendment. The decision is as applicable, therefore, to the powers of Congress under the due-process clause of the fifth amendment as it was applicable under the fourteenth amendment to the prohibition upon the States.

I suppose you gentlemen are familiar with the facts of that case, but I think it may be wise to recall it to your minds before we pro-

ceed to discuss it. The first section of the Texas statute referred to is the section that the court passed upon:

That after the time when this act shall take effect any person in this State having a valid bona fide claim for personal services rendered or labor done, or for damages, or for overcharges on freight, or claims for stock killed or injured by the train of any railway company, provided that such claims for stock killed or injured shall be presented to the agent of the company nearest to the point where such stock was killed or injured, against any railway corporation operating a railroad in this State, and the amount of such claim does not exceed fifty dollars, may present the claim, verified by his affidavit, for payment to such corporation by filing it with any station agent of such corporation in any county where suit may be instituted for the same, and if, at the expiration of thirty days after such presentation, such claim has not been paid or satisfied, he may immediately institute suit thereon in the proper court; and if he shall finally establish his claim: and obtain judgment for the full amount thereof, as presented for payment to such corporation in such court, or any court to which the suit may have been appealed, he shall be entitled to recover the amount of such claim and all costs of suit, and in addition thereto all reasonable attorney's fees, provided he has an attorney employed in his case, not to exceed ten dollars, to be assessed and awarded by the court or jury trying the issue.

Now, that was a case involving but \$10.

Mr. KENNEDY. That would clearly be unconstitutional for this reason, that it gives that remedy only to citizens of the State of Texas.

Mr. FAULKNER. This is a state law, and it could not go beyond that.

Mr. KENNEDY. It limits that procedure to citizens of Texas, and the Constitution of the United States provides that the citizens of all States shall have the same rights within a State.

Mr. FAULKNER. The construction of that section was that any person entering into a contract or suffering a loss in the State of Texas would come under it, whether he was a citizen of the State of Texas or a citizen of any other State of the Union. I think that would clearly be the construction. But whether that was the right construction or not that I have suggested, that question did not arise in the Supreme Court. They passed upon it entirely upon the merits of the propositions. Mr. Justice Brewer delivered the opinion of the court in this case, given on page 153. He uses this language:

They are not treated as other debtors, or equally with other debtors. They can not appeal to the courts as other litigants under like conditions and with like protection. If litigation terminates adversely to them, they are mulcted in the attorney's fees of the successful plaintiff; if it terminates in their favor, they recover no attorney's fees. It is no sufficient answer to say that they are punished only when adjudged to be in the wrong. They do not enter the courts upon equal terms.

There is the important proposition that the court lays down.

They must pay attorney's fees if wrong; they do not recover any if right, while their adversaries recover if right and pay nothing if wrong. In the suits, therefore, to which they are parties they are discriminated against, and are not treated as others. They do not stand equal before the law. They do not receive its equal protection. All this is obvious from a mere inspection of the statute.

It is true the amount of the attorney's fee which may be charged is small, but if the State has the power to thus mulct them in a small amount it has equal power to do so in a larger sum.

Then the opinion goes on:

But it is said that it is not within the scope of the fourteenth amendment to withhold from States the power of classification, and that if the law deals alike with all of a certain class it is not obnoxious to the charge of a denial of equal protection. While, as a general proposition, this is undeniably true, \* \* \* yet it is equally true that such classification can not be made arbitrarily. The State may not say that all

white men shall be subjected to the payment of the attorney's fees of parties successfully suing them and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.

Further on he says:

It must be evident that differences which would serve for a classification for some purposes furnish no reason whatever for a classification for legislative purposes. The differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations. Thus the legislature may fix the age at which persons shall be deemed competent to contract for themselves, but no one will claim that competency to contract can be made to depend upon stature or color of the hair.

And further on:

Such a provision would bear a reasonable relation to the delinquency of the debtor, and would certainly create no inequality of right or protection. But before a distinction can be made between debtors, and one be punished for a failure to pay his debts while another is permitted to become in like manner delinquent without any punishment, there must be some difference in the obligation to pay, some reason why the duty of payment is more imperative in the one instance than in the other.

If it be said that this penalty is cast only upon corporations, that to them special privileges are granted, and therefore upon them special burdens may be imposed, it is a sufficient answer to say that the penalty is not imposed upon all corporations. The burden does not go with the privilege. Only railroads, of all corporations, are selected to bear this penalty. The rule of equality is ignored.

It may be said that certain corporations are chartered for charitable, educational, or religious purposes, and abundant reason for not visiting them with a penalty for the nonpayment of debts is found in the fact that their chartered privileges are not given for pecuniary profit. But the penalty is not imposed upon all business corporations all chartered for the purpose of private gain. The banking corporations, the manufacturing corporations, and others like them are exempt. Further, the penalty is imposed not upon all corporations charged with the quasi public duty of transportation, but only upon those charged with a particular form of that duty. So the classification is not based on any idea of special privilege by way of incorporation, nor of special privileges given thereby for purposes of private gain, nor even of such privileges granted for the discharge of one general class of public duties.

But if the classification is not based upon the idea of special privileges, can it be sustained upon the basis of the business in which the corporations to be punished are engaged?

It seems to me, Mr. Chairman, it is the purpose of the court in this case to meet every conceivable argument.

That such corporations may be classified for some purposes is unquestioned. The business in which they are engaged is of a peculiarly dangerous nature, and the legislature, in the exercise of its police powers, may justly require many things to be done by them in order to secure life and property. Fencing of railroad tracks, use of safety couplers, and a multitude of other things easily suggest themselves. And any classification for the imposition of such special duties—duties arising out of the peculiar business in which they are engaged—is a just classification, and not one within the prohibition of the fourteenth amendment.

Then he says:

And whether it enforces it by penalties in the way of fines coming to the State, or by double damages to a party injured, is immaterial. It is all done in the exercise of the police power of the State and with a view to enforce just and reasonable police regulations—

Referring back to the safety-appliance laws and regulations, which they had the right to do.

The CHAIRMAN. Of course, this is not a new matter, and this decision has been read to the committee before. That is not saying

that it shall not be read again, because we can not have too much law. But I would like to make this suggestion to you, so that you can think it over. When we had similar bills to the one now introduced by General Gordon, I think it was the unanimous opinion of the committee at that time that the bill would be unconstitutional if enacted under this decision. Since that time, however, we have enacted the Hepburn law and made very severe penalties on railroads which did not charge the correct tariff rate. Is it not perfectly within our power to provide a penalty against the railroad which makes an overcharge for freight and does not return that overcharge within a certain specified time?

Mr. FAULKNER. Mr. Chairman, that is one view of the matter that suggested itself to me, but it is one that I thought was so foreign to the measure presented to this committee here that I thought it was advisable that I should not express an opinion on it one way or the other.

The CHAIRMAN. I know. But it seems to me very pertinent in connection with the proposition here, because we have not in contemplation here the enactment of separate bills, although we are having hearings upon a whole lot of these bills and reporting a large number of our bills; but we are considering the general subject with a possible view to adding to a general bill a provision sought to be covered by these special bills.

Mr. ADAMSON. We are not bound by the text of any bill. We have the whole field to work in.

Mr. FAULKNER. I understand that fully. My purpose was simply to discuss this particular bill and the theory upon which it was prepared.

The other provision to which you referred is now the law. That law has been put in practical operation, and no contest of its provision has been made.

The CHAIRMAN. I know. But here is a law which makes a penalty upon a railroad if it does take a higher freight rate than the lawful rate. I suppose no one will contend that if that is done by error or accident the railroad company can be penalized under the penalty provision of the Elkins or Hepburn law. But is it not perfectly feasible for us to provide that where they discover in the auditor's office as a matter of fact that there is an overcharge, they shall refund that, as they now admit very freely that if there is an undercharge they have to proceed to collect it, although the cost of collecting may be many times the amount of the undercharge.

Mr. FAULKNER. No, sir. If you insist upon an answer I will say that the principle of this bill is entirely different from the question you suggest to me to answer. The one is that you impose a penalty upon the carrier for claiming an undue charge for performing the duty prescribed by statute, which Congress, you assume, has the constitutional power to impose upon that carrier. If so, then you have a right to impose the penalty for the failure to perform the duty required of it by the Government. But this is a case in which you segregate the carriers of the country on the question, not of enforcing some necessary requirements imposed by the statute in reference to the carrying of interstate commerce at all, but you make a distinction here as to this class of debtors from any other class of debtors throughout the entire country.

Now there is the vice of the principle of this bill, no matter in what form you put it, if that is the purpose. That is the decision of the court and it rests that decision on that question alone. If the purpose of the act is to segregate the carriers as a particular class of debtors and impose penalties upon them, it is taking their property without due process of law.

Mr. ADAMSON. But, Senator, right there, I would like to call your attention to this, that we are not considering this as an ordinary case of debtor and creditor, but we are treating this as one of the practices of a carrier engaged in interstate commerce as to charges, and the correction of errors made in charges.

Mr. FAULKNER. No, sir; it can not be so classed. It is not the relation between the shipper and the carrier as to overcharge, but a simple question of indebtedness. This bill does not apply solely to the question of even overcharges, errors in rate or otherwise. It applies to the destruction of or loss of property under the bill.

Mr. ADAMSON. Senator, when that carrier makes an overcharge it violates the law.

Mr. FAULKNER. The law can then impose a penalty upon it for it.

Mr. ADAMSON. It is one of the practices that we are trying to regulate and control in commerce, and if the carrier violates the law it seems to me it is perfectly competent for us in a regulation to provide that that practice is made perfect in that particular

Mr. FAULKNER. You have provided for that in the general law, with a penalty.

Mr. KENNEDY. Is not the patron who pays more than the legal rate violating the law also?

Mr. FAULKNER. If he does so knowingly; yes, sir.

Mr. KENNEDY. Then there can be no contractual relation between the two parties in that transaction. The money could not be recovered in a suit for debt.

Mr. FAULKNER. We are assuming that he has not done it knowingly, and he has a right to recover back. If there is an overcharge by a bill of lading or a through bill of lading on the carrier's road, there is an error in the rate. This decision has been clearly affirmed in 174 United States, 97, after full consideration.

Mr. ADAMSON. If we provide that if a carrier makes an overcharge and fails to correct that overcharge within a certain number of days he must suffer a penalty, what is the reason that is not valid as regulating a practice of the common carrier?

Mr. FAULKNER. I am not contending that the interstate commerce act is not constitutional—that imposing a penalty upon the carrier for not obeying a constitutional requirement of that act in reference to the question of giving an accurate rate according to the schedule. That is one thing. That is not the segregation of the railroads or making them occupy a different attitude as debtors from other corporations or individuals in the United States.

Mr. ADAMSON. They are segregated in a class as a collaborer to run this Government.

Mr. FAULKNER. They are segregated in many ways by Congress.

Mr. ADAMSON. All that I suggest is that we put into the law the additional language, that if they fail to correct the overcharge in a given time they will be subject to a penalty.

**Mr. FAULKNER.** Mr. Chairman, the case which affirms the Ellis case is the *Santa Fe Railroad v. Matthews* (174 U. S., 97). It says:

In support of this contention great reliance is placed upon *Gulf, Colorado and Santa Fe Railway v. Ellis* (165 U. S., 150). In that case a statute of Texas allowing an attorney's fee to the plaintiffs in action against railroad corporations on claims, not exceeding in amount \$50, for personal services rendered or labor done, or for damages, or for overcharges on freight, or for stock killed or injured, was adjudged unconstitutional. It was held to be simply a statute imposing a penalty on railroad corporations for failing to pay certain debts, and not to enforce compliance with any police regulations. It was so regarded by the supreme court of the State, and its construction was accepted in this court as correct. While the right to classify was conceded, it was said that such classification was based upon some difference bearing a reasonable and just relation to the act in respect to which the classification is attempted; that no mere arbitrary selection can ever be justified by calling it classification. And there is no good reason why railroad corporations alone should be punished for not paying their debts. Compelling the payment of debts is not a police regulation. We see no reason to change the views then expressed, and if the statutes before us were the counterpart of that, we should be content to refer to that case as conclusive.

There could not be a stronger decision to sustain the principles of a case than that.

**Mr. STEVENS.** But, Senator, when we provided equal penalty when a shipper refuses to pay an undercharge to the railroad, what then?

**Mr. FAULKNER.** I do not think that would alter the principle, or change it, as announced by the court. In order to make such a law constitutional you would have to apply it to everyone over whom Congress has jurisdiction in the litigation of the courts. As the court has held that this is not a proper subject for classification, it deprives you of the right to place the carriers into a class by themselves in this collection of debts. Therefore, in order to make this a valid, constitutional law, you would have to make the penalties provided cover all suitors over whom Congress has jurisdiction. That position, I think, is correct.

**Mr. Chairman,** I will not discuss the third proposition, which I think renders this section unconstitutional, as I desire to hurry on. I shall leave it to the committee to determine that for itself.

It is a provision that if the line is on a connecting carrier's road, the liability shall be paid by the initial carrier. Whether the Congress has the power to impose a liability on the initial carrier for loss upon a connecting carrier's road and require him to collect that loss himself, after first paying it to the shipper, is a question that arises under the Carmack amendment, which has never been decided, and which I do not propose to discuss before the committee to-day.

I want to refer to some of the questions affecting the merits of this bill, as there are many things to be considered before its favorable consideration. For example, you ought to determine whether the initial carrier or the delivering carrier should be the responsible party. If you determine that, then you should determine the basis upon which the claimant should make his claim to the railroad company—I mean upon what evidence. I think you ought to provide in any bill, if any such bill should ever be passed, that the claimant should file with the railroad company liable the bill of lading, the invoice, and if any damages have occurred, the actual statement of the damages, and, if he has been put to any expense, the actual bill of expense, and the affidavit of the delivering carrier or agent at the point of destination that the goods have not been delivered. That

ought to be imposed upon the shipper as a duty in presenting his claim, if you want prompt action.

I desire to call the attention of the committee to another matter. The period of ten days for acknowledgment of the claim is not objectionable. As a general rule, all claims are acknowledged within that time. Ninety days is not really an objectionable period of time for the payment of claims on the line of the carrier that has issued the bill of lading and initiated the traffic, the injury occurring on his line. But, gentlemen, limiting the time of payment to ninety days, where the bill of lading or the routing of the property is over a long haul, I fear the provision would be impracticable. It could not be done in ninety days.

The traffic gentlemen who are present here will fully sustain the view that I have expressed. In such a case they have to write to the conductors of each division, and to each line at junctional points where it is transferred, to trace it up and find where it was lost, on what road it was lost, and secure all these facts before they can say that this claim is a just claim.

You must remember that under the present practices of the carrier the shipper may have routed his freight by a route different from that with which the carrier is connected that initiates the freight. That renders it far more difficult to ascertain the facts. You must further consider that the Interstate Commerce Commission has taken this subject under consideration.

This whole claim subject, gentlemen, is now before the commission. The Freight Claim Association notified Mr. Adams last year, and we have here some of the gentlemen who are members of a committee of that association, to come to their association and discuss these matters with a view of making an organization within the freight departments of the roads that would facilitate the more rapid payment of claims. Mr. Adams met with it, and I have read his speech before the association with a great deal of pleasure. He suggested the appointment of a committee to act with the Interstate Commerce Commission, informed them that the Commission under his advice the year before had directed him to formulate rules and regulations upon this very subject, and asked the association to do as the accounting officers of the railroads have done in reference to questions of accounts of the carriers, to appoint a committee to cooperate with the Interstate Commerce Commission. That was done at once, and that committee is now working with the Interstate Commerce Commission, trying to devise means, as they did in the accounting departments of the roads, to avoid, as far as possible, contentions between shippers and the carriers.

The carriers were paying some of these claims so fast that the commission issued an order on the subject. It found that claims for overcharges were being paid too rapidly, and without, as it feared, sufficient investigation, and in the ruling Bulletin No. 3, issued February 12, 1909, rule 68, it provided, "that it is not a proper practice for railroad companies to adjust claims immediately upon presentation without investigation. The fact that shippers could give a bond to secure repayment in case, upon subsequent examination, the claims were proved to have been improperly adjusted, does not justify the practice."

These overcharges the commission felt the railroads were settling too rapidly, without determining the question whether on long through routes the exact rates charged had been satisfactorily ascertained, and the settlement was in exact accordance with the lawful rates of the different roads.

Mr. ADAMSON. Were they not afraid that some rebates might slip in?

Mr. FAULKNER. Yes. That was the purpose of the rule.

The CHAIRMAN. Was not that ruling made after the hearing of the meat packers' claims in Chicago for damages?

Mr. FAULKNER. I do not know; but I know, as Mr. Adamson suggested, that it was to prevent any possibility of a refund except in accordance with the filed schedules.

Mr. ADAMSON. For fear a rebate might be made and the bond taken and the bond put to the bed and allowed to sleep forever?

Mr. FAULKNER. Yes. That shows that the railroads as a general rule on that class of claims were not delaying settlements, and that the commission thought they were going a little too fast in their adjustments. Whether they had any suspicion that it was being improperly done, I do not know.

The CHAIRMAN. There was quite a hearing and discussion of the subject in reference to the claims by the so-called "packers" in Chicago for meat transported elsewhere, and the Attorney-General issued notice to the packers and the railroad companies, I believe, that they must observe the law. The question whether they had violated the letter of the law was somewhat doubtful, but they had certainly violated the spirit of the law, and I think this ruling followed that investigation.

Mr. TOWNSEND. You understand, Senator, of course, that the claims matter furnishes now about the only means of granting rebates?

Mr. FAULKNER. Yes, sir; and of course the commission has to be very particular about it, and they are right; and their ruling is that no claim for refund must be paid until the carrier is thoroughly satisfied of the absolute correctness of the amount.

Mr. KENNEDY. This fixing of ten days—does not that relax rather than make more harsh the operation of the existing law?

Mr. FAULKNER. I do not know. That would depend upon the law of the State.

Mr. KENNEDY. I mean the operation of the law that we passed. If the railroad exacts too much and receives more than the filed rates, it has violated the law?

Mr. FAULKNER. Yes, sir.

Mr. KENNEDY. The passage of this, it seems to me, would give them ten days' grace to correct that, if done by mistake.

Mr. FAULKNER. I doubt if it would relieve them of any of the penalties prescribed by this statute—the passage of this law.

Mr. KENNEDY. It occurred to me it might operate that way. It could easily be made to operate that way, and that would be a relaxation of the harshness of the other rule.

Mr. FAULKNER. I grasp the force of the original question.

Mr. KENNEDY. Do you say, Senator, that the railroads are anxious to cooperate with the commission in the endeavor to establish a speedier method of adjusting claims?



Mr. FAULKNER. I know they are, sir; and I know that is the opinion of the commission, and I know that is the opinion of Professor Adams in reference to this matter, and they are now working actively on that line. There is a member of that committee present who will be before you and who will give you the relation of the carriers with the commission on the subject of the adjustment of claims.

The CHAIRMAN. Is there some one else?

**STATEMENT OF MR. R. L. CALKINS, OF NEW YORK, FREIGHT CLAIM AGENT OF THE NEW YORK CENTRAL RAILROAD.**

Mr. CALKINS. Mr. Chairman, did you wish me to give you some information in regard to the committee that is now in conference with the Interstate Commerce Commission?

The CHAIRMAN. We would be glad to have any information bearing on the question, including that.

Mr. CALKINS. At the suggestion of Professor Adams, representing the Interstate Commerce Commission, the Freight Claim Association, which is an organization representing about 90 per cent of the railroads on rail and water lines, appointed this committee. He suggested that we form a committee and meet with him or with representatives of the Interstate Commerce Commission for the purpose of formulating, possibly, some new rules or revising or considering our present rules and reaching, possibly, some means by which more expedition in the settlement of claims could be had.

That was one of the objects of the conferences. The first meeting was held in Chicago, in October, I think. Professor Adams attended it and addressed them, and the Senator has mentioned the suggestions he made there. The next meeting was held in this city in November, which Professor Adams attended, and Commissioner Harlan addressed the claims committee. The next meeting is to be held in this city on March 1. There are several subcommittees of this claims conference committee, so-called, which are working on different subjects which have been suggested by Professor Adams, such as the more prompt settlement of claims, classification of losses and damages, the revision of the present rules of the Freight Claim Association, and various other subjects. I can not enumerate them now. I did not expect to be called upon to give a résumé of the work of this committee. I am only a member of it.

Mr. RICHARDSON. In those conferences that you have had between the members of that association and the Interstate Commerce Commission, have you undertaken to find out what would be the proper construction of the laws that Congress has passed relative to the transportation of freight, charges, and so forth?

Mr. CALKINS. Not as yet.

Mr. RICHARDSON. You have not reached that stage?

Mr. CALKINS. No, sir. I have no doubt but that it will come to that.

Mr. RICHARDSON. Because all of the rules you adopt would be made subordinate to the law of Congress that was passed upon that subject?

Mr. CALKINS. Surely. The Freight Claim Association has never undertaken to formulate rules for the government of its members as to liability between carriers and shippers or consignees. They may hereafter.

Mr. RICHARDSON. I am just asking for information, to know the scope of your association. I think that is a very important association to reach those conclusions. But do you discuss such things as demurrage, and loading and unloading of cars, and time, and all that sort of thing?

Mr. CALKINS. Yes, sir; anything that would come within our province of adjustment of freight claims or regulating our agents in the handling of freight. But as to questions of liability between carriers and shippers those are matters that are left with our legal departments.

The CHAIRMAN. What is the process of adjusting these claims as between the railroads themselves?

Mr. CALKINS. I would like to take a supposititious case and follow it through.

The CHAIRMAN. We would be very glad to have you do it.

Mr. CALKINS. Suppose a claim is presented against a railroad in New York on a shipment to Kansas City. It is for damage. That claim, as is the usual practice, is acknowledged by the road against which it is filed within the course of a few days; generally within two or three days; that is, if received direct from the claimant to the claim department. It may be forwarded through local agents or freight solicitors, and be more than two or three or four days in reaching the claim agent. But when the claim agent receives it, it is usually acknowledged to the claimant within a very few days. If accompanied by the bill of lading, the freight bill, and the bill substantiating the amount claimed—if those have been filed by the claimant—the claim at once is taken up for investigation. If all of those necessary documents are not received at the time, it is necessary for the claim agent to correspond with the claimant and obtain them; in other words, to obtain sufficient facts and documents to enable him to intelligently and properly or legally adjust the claim. If the road against which the claim is made is responsible for the damage—that is, if the damage occurred on that line—adjustment can be made, and usually is made, within perhaps thirty days. If there is no record of the damage on that road, it is necessary to forward the papers to the next road in the route and have them make such investigation as is necessary, usually by referring the papers to the junction point at which they received the freight and the point at which they delivered it to the line beyond them, and that course is gone through to destination, unless the damage is located.

There is a proposition before the Claims Committee at the present time which is now being practiced to a considerable extent, of the claim department against which the claim is filed immediately addressing the destination agent and ascertaining the condition of delivery of the freight to the consignee.

Mr. TOWNSEND. Would your claim agent have authority to settle a claim if he is satisfied it is right?

Mr. CALKINS. Yes, sir.

Mr. TOWNSEND. It does not have to go to any other department of the railroad?

Mr. CALKINS. No, sir. I am speaking now of my own position. That may not be true of the claim departments of all roads. It is, however, true of the majority of the roads, I think.

In regard to the ninety-day clause in this bill, I would like to say that in my opinion a very large percentage of just claims is paid

in far less than ninety days, but there is a large volume of claims which are not just claims and which should not be paid and others in which investigations have to be made requiring more than ninety days to develop the carrier's liability. There are many overcharge claims which in the opinion of claimants should be paid immediately, but which we may find, after considerable investigation and correspondence with tariff bureaus, and so forth, must go to the commission with an application for authority to pay the claims. I have a great many of those claims where I must obtain permission from the Interstate Commerce Commission before I can pay the claims.

Mr. KENNEDY. I suppose there are quite a number of claims of such a character that it is pretty hard to tell whether they ought to be paid or ought not to be paid?

Mr. CALKINS. Yes, sir.

Mr. RICHARDSON. By what reason or authority has the commission a right to pass upon a claim and decide whether it is just or not?

Mr. CALKINS. It is a question of the interpretation of the rulings that have been formulated by the Interstate Commerce Commission.

Mr. RICHARDSON. I understand that interpretation, but if you think that you are liable to the demands of a claimant and that the claim is just and right, I do not see what any authority on earth has got to do with it. But your own company, unless you get into some conspiracy and are doing something wrong, would be perfectly competent to attend to it itself.

Mr. CALKINS. It may be a difference of opinion as to the basis of a tariff between two points over other roads by which there are no through tariffs. A man may file a claim on the basis of certain tariff rates in existence on other lines.

Mr. RICHARDSON. It is a transaction that the Interstate Commerce Commission would have to look into to see that you are doing right by somebody else?

Mr. CALKINS. Yes; but the combination of rates on these irregular routes by which the shipment traveled might exceed the through tariff rate, and the law would require us to settle any excess over the rates by the natural routes. But we must have the commission's permission. That is one of the cases. There are many.

Mr. RICHARDSON. I am glad you have explained it so clearly.

Mr. KENNEDY. Coming back to the case you explained a while ago, suppose the goods are received on a routing from New York to Kansas City—I believe that was the line—in good shape, and a claim comes in for damage to those goods. It is claimed that they did not reach their destination in that good shape, but that they were damaged by rough handling in transit, and you have difficulty in determining where that rough handling occurred amongst the roads. So far as the claimant is concerned there is no contention but that he has the right to recover against some one?

Mr. CALKINS. That is true if we have evidence that the damage did exist at the time the shipment was delivered to the consignee at the destination. We must obtain that information.

Mr. KENNEDY. So far as the shipper was concerned, when the goods are received in good shape, that is conceded, and yet when they reach their destination in bad condition, apparently through rough handling, there is a liability somewhere?

Mr. CALKINS. Yes. The claimant does not submit that evidence with his claim as a rule; not perhaps in one case in a hundred. He alleges certain damage, and we must develop it.

Mr. KENNEDY. What is done with such a case as that now, in the ordinary practice?

Mr. CALKINS. The practice now is to make our investigation at the shipping point at the same time that we make the investigation at the destination point, and if we develop that the goods were received, notwithstanding it may be a clean bill of lading—sometimes a clean bill of lading is issued when the goods are not in that condition, you know—if we develop, independent of the bill of lading, the fact that the shipment was received at the shipping point in good condition, as indicated by the bill of lading at the shipping point, and yet that the damage did exist at the destination at the time of delivery to the consignee, then we can settle that claim at once without any intermediate investigation.

Mr. KENNEDY. It is not necessary to locate the responsibility for the injury?

Mr. CALKINS. No. We can do that after the claimant has received his pay.

Mr. STAFFORD. Is that the practice with all roads when damage is proven to have occurred to merchandise in transit, that the initial carrier will settle the account and then determine upon whom the burden should rest in paying it among the other carriers?

Mr. CALKINS. I think it is the general practice; yes, sir.

The CHAIRMAN. On that question, suppose you make a shipment, say, from New York to Kansas City, and the goods are damaged on some part of the line west of the Missouri River. Is the claim ordinarily filed at Kansas City or at New York?

Mr. CALKINS. That depends. With the large shippers, the large industries, they file nearly all of their claims in behalf of their consignees.

The CHAIRMAN. Suppose that claim were filed with the New York Central Railroad, and from your investigations you were satisfied that the damage occurred after it left your line, and you were satisfied that the damage did occur. Would you pay the claim before the other line conceded its liability or wait until it conceded the liability?

Mr. CALKINS. Under the present rule of the Freight Claims Association that I have mentioned we can pay that claim and charge it out to that road without reference to the authority.

The CHAIRMAN. Although they may deny that they are liable?

Mr. CALKINS. That will come up after the settlement of the claim.

The CHAIRMAN. That is what I wanted to get at.

Mr. CALKINS. There is an arbitration committee in this claim organization for that very purpose.

The CHAIRMAN. You say you can pay that claim?

Mr. CALKINS. Yes, sir.

The CHAIRMAN. As a matter of practice, do you actually do that before the liability is settled with the other roads, ordinarily, in large claims?

Mr. CALKINS. Yes. Large claims—not involving large proof but large amount—may be referred for investigation for the information of the carrier liable. As a matter of courtesy it is proper that they should be advised.

The CHAIRMAN. But the ordinary small claims are paid by the carrier upon whom the claim is made?

Mr. CALKINS. Yes, sir.

The CHAIRMAN. How long have you had rules to that effect?

Mr. CALKINS. Several years. I could not say exactly.

The CHAIRMAN. Suppose the claim were made to the line delivering the goods at Kansas City?

Mr. CALKINS. The same thing would apply.

The CHAIRMAN. Although the damage might have occurred on the New York Central line?

Mr. CALKINS. Yes, sir. The destination roads could pay that claim with more intelligence promptly than the initial line, because the initial line only knows the condition of the property at the time of its receipt from the shipper when it was forwarded. The delivering line knows the condition of the property at the time of delivery to the consignee, and he has the bill of lading to evidence the condition at the shipping point.

Mr. RICHARDSON. The initial carrier is responsible for any damages or destruction of the shipment under the law?

Mr. CALKINS. Under the bill of lading?

Mr. RICHARDSON. Yes; and under the present law?

Mr. CALKINS. Yes, sir.

Mr. RICHARDSON. If a shipper makes a shipment on a through route that goes from your line and the property is lost or mislaid on some other line with which they are transacting business in connection with it, the shipper comes to you as the initial carrier, and under the statute can bring suit instead of going away off on the connecting line and bringing suit in a distant State?

Mr. CALKINS. Yes. But the Hepburn Act provides that the road issuing the bill of lading is responsible.

The CHAIRMAN. Under your statement, Mr. Calkins, that the claim may be filed with the initial carrier in the shipment that I suggested, and also with the delivery carrier, and each may pay the claim without consulting the other, what is to prevent a man filing a claim with both companies and receiving two payments on the claim?

Mr. CALKINS. I can answer that in a very brief way, or otherwise, as you may wish. A properly substantiated or supported claim, when presented, should have the original bill of lading, the original freight bill, and, if it is a loss or damage claim, the invoice of the value of the goods.

The CHAIRMAN. Suppose it is an order bill of lading that the company has itself. That is in the hands of the delivery carrier?

Mr. CALKINS. Yes. It must be procured from the road by which the shipment is made and attached and filed.

The CHAIRMAN. You do not pay claims, then, without the production of the original bill of lading or something accounting for its loss?

Mr. CALKINS. No, sir.

The CHAIRMAN. Is the original bill of lading when presented considered as proof of the character of the goods when delivered to the initial carrier?

Mr. CALKINS. Not always, but it is evidence.

The CHAIRMAN. It is *prima facie* evidence?

Mr. CALKINS. Yes, sir. I remember a case not long ago of a bill of lading issued for a case of rabbit skins, I believe, and when they were

lost they were proved to be oil paintings of great value; so that it is not always proof. [Laughter.]

The CHAIRMAN. What I mean is, you do not require, as I understand you, any other proof of the character of the goods as delivered to the initial carrier than the bill of lading?

Mr. CALKINS. No, sir; with this exception, that some of the freight inspection bureaus located at large railroad transfer points, such as Buffalo, Chicago, and St. Louis, make inspection of packages of freight to ascertain if the bill of lading represents the actual article shipped in order that there shall be no violation of the initial classification.

The CHAIRMAN. But that is a matter of defense for the railroad. What I wanted to get at was this: In a case of damage, when the shipper presents the bill of lading is that presumed, so far as he is concerned, to correctly state the character of the goods, that they are received in good order?

Mr. CALKINS. Yes, sir.

Mr. WASHBURN. Do you ever have any cases where claims are brought against you as the initial carrier and where you are not responsible for the damage and where there is no question of damage, where you find it difficult to fix the responsibility on any connecting road, to find where the damage occurred and by whom it was inflicted?

Mr. CALKINS. Very many.

Mr. WASHBURN. And in those cases you have to bear the charge yourselves?

Mr. CALKINS. Well, in some cases, but not as a rule. Rules have been provided by the Freight Claim Association, this national railroad organization, which protect to a certain extent, at least, one road against another in the payment of claims by one road that are really chargeable to another.

Mr. WASHBURN. In the case I instanced, how is the initial road really protected against the connecting road by these rules?

Mr. CALKINS. The rules may provide that a road against which a claim is filed may pay the claim on evidence that the loss or damage or overcharge, as the case may be, actually exists, and may charge out without reference to authority to such other roads as may be chargeable with the claim, or may, in case the investigation fails to locate the point at which the loss or damage occurred, pro rate it as unlocated from the shipping point to the destination, whether on the basis of mileage or the basis of revenue derived by each road on a shipment.

Mr. WASHBURN. That is what I wanted to get at.

The CHAIRMAN. How often are these balances between the railroads settled?

Mr. CALKINS. Individually, as a rule, with roads that are not in one system or organization. Sometimes they are charged out in monthly accounts, monthly statements. But as a rule they will be proportioned on amounts chargeable by one road to another and are charged out individually.

The CHAIRMAN. I supposed they only settle the balances. They do not interchange?

Mr. CALKINS. The accounting departments will settle the balances. I am speaking of the operations of the work in the freight-claims office. The freight-claim office will charge out those proportions to other

roads, and in the accounting offices of the roads they will settle by balances at the end of each month.

The CHAIRMAN. At the end of each month?

Mr. CALKINS. Yes, sir.

Mr. RICHARDSON. The Chairman, Mr. Mann, asked you a few moments ago if a bill of lading was not presumptive evidence of the facts alleged in the bill. Now, do you believe that it would be a right and just and proper law to declare that the bill of lading given by an agent of a common carrier should be absolutely accepted under all circumstances and conditions?

Mr. CALKINS. No, sir; I do not.

The CHAIRMAN. Have you ever known of an agent signing a bill of lading and making a description of a property therein when he had never received that property at all?

Mr. CALKINS. Yes, sir; there are such cases.

Mr. RICHARDSON. You do not think, then, that the carrier ought to be made responsible for such a fraud in cooperation or in concert with some outsider as that would be when the property never came into the hands of the common carrier at all?

Mr. CALKINS. I would rather our attorneys would answer that. I am very ready to answer the part where the employee of the railroad was not a party to it.

Mr. RICHARDSON. You certainly do not think you ought to be responsible for property that you never received?

Mr. CALKINS. No, sir; I do not.

Mr. RICHARDSON. We have been discussing a bill of lading proposition here, a good deal heretofore.

Mr. STEVENS. You evidently differ with the opinion of the legislature of the State of Alabama on that subject. [Laughter].

The CHAIRMAN. What is your position where you issue a bill of lading on your road and collect the freight—possibly this would not occur on the New York Central—and the freight was never received; that is, the shipment was never received in fact, or not completed. What is your practice in those cases?

Mr. CALKINS. In the case of a claim for the value of that freight, do you mean?

The CHAIRMAN. Yes.

Mr. CALKINS. Our position is to pay that claim as soon as we can ascertain the proper amount, and the sooner the better, both for the railroad company and the claimant.

Mr. TOWNSEND. Can you say whether it is a fact or not that the railroad companies generally, those in your experience, at least, are paying their claims more promptly now than they used to do?

Mr. CALKINS. Yes, sir. I think claims are very much more expeditiously paid now than they have been in past years, and they are improving every year. I have a little evidence of that in a letter here from the chairman of the National Industrial Traffic League, or chairman of the freight department of that organization. It just came along yesterday, and I brought it with me. He says—

The CHAIRMAN. Who is he?

Mr. CALKINS. Mr. Bellville. It is a letter he recently wrote in reference to the improvement in the settlement of claims by railroads. He says:

It is undoubtedly a fact that in the last two or three years, and notably during the last eighteen months, there has been on the part of the railroads of the country in

general an absolute reformation in the matter of the adjustment of claims of every character, and this is particularly true in regard to claims for minor amounts. I think you will remember that in my reports to the league we have given full credit to the railroads in general, and the freight claim agents in particular, for the reform which has been worked in this direction.

As illustrating the improvements which have been made. I was talking a day or two ago with the traffic manager of a very large industrial concern which files from 1,200 to 1,500 claims per annum, and averaging about \$40,000 a year, and he told me that on the 1st of January, 1908, he had unsettled claims to the amount of about \$65,000 and that on the 1st of January, 1909, his unsettled claims amounted to but \$26,000, and on the 1st of January, 1910, having filed during the year claims aggregating \$35,000, they had only \$13,000 unsettled, a large part of which had been filed during the last few months of 1909.

This letter is dated January 8, 1910.

Mr. TOWNSEND. Are there any railroads not members of this voluntary Freight Claim Association?

Mr. CALKINS. Very few, and all of those, I think, are very small roads, principally water lines. The Freight Claim Association represents about 90 per cent of the railroad mileage of this country and Canada.

Mr. TOWNSEND. Now, this reform in the methods of adjusting and paying claims has been brought about through the cooperation of the accounting department of the Interstate Commerce Commission and the railroads themselves, has it not?

Mr. CALKINS. To a certain extent, and various conferences with industrial leagues and the Freight Claim Association, and various conferences with Professor Adams, even prior to his suggestion that we confer with the commission. There has been a steady improvement in the matter of expediting the settlement of claims going on for the last ten years at least. I think you gentlemen will appreciate this fact, that a railroad may settle 90 per cent, or even a larger percentage, of their claims promptly and with entire satisfaction to the claimant, but if there is one or a few claims which are delayed their record for prompt treatment of claims is lost sight of.

Mr. TOWNSEND. You recognize the fact, don't you, that in the past, at least on the part of some of the roads, there has been some disposition to delay as long as possible the adjustment of claims?

Mr. CALKINS. Yes, sir. I have no doubt about that.

Mr. TOWNSEND. I do not think anyone who has practiced law has any doubt of it, either?

Mr. CALKINS. I think now the freight claim agents are desirous of settling their claims promptly. It is only a question with them of developing the facts promptly to justify the payment.

Mr. KNOWLAND. Conditions are growing better all the time?

Mr. CALKINS. Yes, sir.

Mr. KNOWLAND. There is very little complaint now?

Mr. CALKINS. I believe so.

Mr. TOWNSEND. Is there any probability of getting these other roads into this Freight Claims Association—those other roads that are not in now?

Mr. CALKINS. The association is trying all the time. But those other roads are very few, and they are of minor importance. Many of them are small steamship lines plying on rivers or inland waters, and many of them that are not members of this association are abiding by the rules of the association.



The CHAIRMAN. When you refer to ninety per cent of the mileage, do you have reference to the mileage of the railroads or the mileage of the railroads and the ship lines combined?

Mr. CALKINS. I had reference to the mileage of the railroads, but I think the same thing would apply to the steamships. I think all of the coastwise steamship lines on both sides of this country, on the Pacific and on the Atlantic, are members, nearly all of them at least.

The CHAIRMAN. Can you tell us how much the claims amount to that were allowed in the course of a year, on the average, by the New York Central, or the total amount in the United States?

Mr. CALKINS. No. I would be ashamed to tell the amount of the New York Central. [Laughter.] I think we average something over a million dollars a year for loss and damage, and I pay about 450 claims a day. I have averaged that for several years.

Mr. RICHARDSON. Do you have any claims that you have ever settled and that have been filed against your company for failure to furnish cars?

Mr. CALKINS. Yes, sir. We have had some, but not in the last three years.

Mr. RICHARDSON. Have you ever settled any of those?

Mr. CALKINS. I do not know whether we have in court or not.

Mr. RICHARDSON. Or anywhere else?

Mr. CALKINS. I believe not.

Mr. RICHARDSON. What is the condition of your road now as to its capacity and equipment to furnish cars for the demands of shippers?

Mr. CALKINS. I am not competent to speak for the transportation department on the subject, but just at the present time it is generally known that our equipment, like that of many other roads, is far better and more able to handle the traffic than it was a few years ago.

Mr. RICHARDSON. Of course that is what I am trying to get at. Now, there is not a shortage of cars, according to your judgment, which is claimed to exist in the country now as compared with what it was in 1907?

Mr. CALKINS. No, sir.

Mr. RICHARDSON. Was not that about the severest ordeal or trial, within a given period, that the railroads had to go through to keep up with the immense increase in production in this country?

Mr. CALKINS. Yes, sir. I believe that is true, so far as my experience is concerned.

Mr. RICHARDSON. Taking into consideration the wonderful increase in production of our country in the last five or six years, what has been the percentage of increase on the part of the railroads in the construction and manufacture of freight cars?

Mr. CALKINS. I am not competent to answer that.

Mr. RICHARDSON. But you do know that the productive capacity of this country has very far exceeded the transportation facilities of our railroads?

Mr. CALKINS. It has in times past, but I believe that is not the case at the present time.

Mr. RICHARDSON. What I mean to say is that the railroads need a little breathing spell to catch up, don't they? They are doing the best they can?

Mr. CALKINS. Undoubtedly. I do not think there is a shortage of cars at the present time, although the tonnage that is moving now is

heavier than ever before. But equipment has been increased so largely that—

Mr. RICHARDSON. In that condition of rising up and getting above all the restraining and hampering effects of your experience of 1907, do you believe that drastic and restraining and hampering legislation is necessary to give the railroads that expansion that they need in this country? I mean drastic legislation such as we have got proposed in many instances here?

Mr. CALKINS. No, sir.

Mr. RICHARDSON. Don't you think you should have more liberty and license, and that any that we could give would be productive of benefit?

Mr. CALKINS. Unquestionably.

The CHAIRMAN. Mr. Calkins, are you at the head of the claims department of the New York Central?

Mr. CALKINS. Yes, sir.

The CHAIRMAN. Does that include any of the lines controlled by the New York Central beside the actual New York Central Railroad?

Mr. CALKINS. There are eight freight claim agents representing the lines in what is known as the New York Central system—the Michigan Central, the Lake Shore and Michigan Southern, the Big Four, the Lake Erie and Western, the Pittsburg and Lake Erie, the Rutland, and so forth, and the Boston and Albany. That is under my jurisdiction. Those freight claim agents are in what is known as the New York Central committee of freight claim agents, and I am chairman of that committee. That committee was organized partly for the purpose of expediting the settlement of claims for traffic moving over the several lines in that system, and by that I act as the freight claim agent of all the roads in the system in connection with claims presented against the New York Central roads.

The CHAIRMAN. Do you know how many men are engaged in the settlement of claims on the entire New York Central lines?

Mr. CALKINS. I do not think that 500 would be too large an estimate; I have 102 in my office and three special agents on the road for personal investigations.

The CHAIRMAN. And these men do nothing else?

Mr. CALKINS. Nothing else; no, sir. If you will permit me I would just like to read a letter that I wrote to the chairman of the Niagara Frontier Shippers' Traffic Association in connection with the possible cause of delays in the settlement of claims. The letter is addressed to Mr. A. E. Sherman, chairman, Niagara Frontier Shippers' Traffic Association, 424 Chamber of Commerce Building, Buffalo, N. Y., and reads as follows:

NEW YORK, February 1, 1910.

MR. A. G. SHERMAN,

*Chairman Niagara Frontier Shippers' Traffic Association,  
424 Chamber of Commerce Building, Buffalo, N. Y.*

DEAR SIR: Acknowledging receipt of your letter dated 27th ultimo, in which you invite an expression of my opinion as to the most prominent reasons for the delay in the settlement of freight claims:

Without the least desire to palliate the faults of carriers, I must first give due prominence to those of the average shipper or consignee, because delays in the settlement of claims are largely due to the incomplete form in which they are presented for the carriers' consideration. Possibly the average claimant considers that the claim office has, or at least should have, all facts and data regarding his particular claim at hand, and should therefore be in a position to immediately pass upon its merits. If this

condition were possible, it would assuredly be ideal both from the standpoint of claimant and carrier; but while the former may have immediate knowledge of all irregularities concerning his traffic, the business of the latter being so much more expensive both as to volume and territory, the facts essential for a reasonable substantiation of claims must necessarily consume more time for development.

To illustrate the above I will cite the case of a claim before me: The claimant sent us a bill representing the value of goods checking short at destination. We acknowledged its receipt and informed him it would be necessary for us to have the bill of lading, invoice, and freight bill to enable us to locate the particular shipment and verify the claim. He sends us the freight bill and suggests that we are simply trying to delay the settlement. This is not an exceptional case, but quite similar to daily experiences in any large claim office. Firms employing modern business methods are more particular in the preparation of their claims before presentation, but the majority omit many material facts or documents, and thus cause the claim office to secure them by correspondence or investigation.

Claims for loss or damage which is discovered by consignees after taking delivery, also claims on traffic which has moved over several different lines to more or less distant points, require more time for investigation and verification than do claims on local traffic, which delivering agents can readily confirm, yet the average shipper or consignee places them all in the same class and apparently considers that one should be adjusted as expeditiously as the other. Probably one-half the claims presented are settled within thirty days, and a large percentage of the balance within sixty days. The prompt adjustment of the many is, however, frequently lost sight of through delay to the few.

Regarding avoidable delays chargeable to carriers, the principal causes can probably be assigned to insufficient and inefficient forces in the claim office. Many and possibly the majority of claim offices are so equipped that all classes of freight claims are treated promptly and intelligently, but you can readily appreciate that when such an office is obliged to await the action of a line having an indifferently equipped office, before making settlement with claimant, how easily the former can, in the opinion of claimants, be classed with the latter.

I have devoted much time and thought to the subject of prompt settlement of freight claims, and believe my efforts in that direction have brought about many excellent improvements in the past few years, but much remains for accomplishment. Therefore I appreciate your request for my views and I desire to assure you of my willingness to cooperate with your association in any way I consistently can for a betterment of the conditions you have in hand.

In conclusion, permit me to add that if your association can recommend to the shipping public a few or all of the following suggestions a marked improvement in the time required for claim settlements can be made:

In the case of overcharge in rate that bill of lading and freight bills accompany the claim, with definite reference to tariff or classification on which based.

In the case of overcharge in weight that the above documents, with definite evidence of the correct amount, be submitted.

In the case of loss or damage that the bill of lading and freight bill, with invoice of value or definite evidence of amount actually due, be submitted.

That in case the delivering carrier has no knowledge of the loss or damage claimed reasons be given for placing the responsibility with them.

That all claims be made in conformity with conditions of the uniform bill of lading, it being the duty of freight claim agents to observe such conditions in considering questions of carriers' liability.

Respectfully,

*Freight Claim Agent.*

Mr. STEVENS. Do you have any circular of instructions that you give claimants, advising them how to prepare their claims for presentation?

Mr. CALKINS. No, sir; we have not. The freight claim association has rules defining what evidence should be furnished in support of claims.

Mr. STEVENS. Is that made public in any way so that shippers can get hold of it?

Mr. CALKINS. Not at the present time. I have forms for the purpose of sending out to claimants who file incomplete claims with my

office, and that is probably practiced by a majority of railroads, and those forms request certain documents and explain why they are necessary.

Mr. STEVENS. Those can be had upon request?

Mr. CALKINS. Yes, sir.

Mr. STEVENS. You spoke a moment ago of a large concern whose accounts had been settled more promptly each year. In a concern like that does your company have claims against that concern for shortage, where mistakes have been made?

Mr. CALKINS. Undercharges?

Mr. STEVENS. Yes, sir.

Mr. CALKINS. We have very few undercharge claims against consignees, only such as are developed by investigation through our accounting department or corrections in weights after the delivery of the freight has been made at a bill rate. There are some cases.

Mr. STEVENS. Do those accounts go through your department?

Mr. CALKINS. Part of them do; the majority, I think, go through the freight accounting department, the freight auditor.

Mr. STEVENS. Those that do not go through your department but go through the freight auditor's department, in what way are they collected, each individual claim collected directly of the shipper?

Mr. CALKINS. Yes, sir.

Mr. STEVENS. The consignee?

Mr. CALKINS. Yes, sir.

Mr. STEVENS. In what way are those collected that go through your department? By way of set-off in accounting or collected directly, individually?

Mr. CALKINS. They are never adjusted by set-off; they are adjusted individually, each case separately on its own merits.

Mr. RICHARDSON. Does the settlement of claims for the destruction of live stock go through your department?

Mr. CALKINS. Yes, sir.

Mr. RICHARDSON. What is your mode and manner of arriving at your liability? How do you do that?

Mr. CALKINS. In the case of loss?

Mr. RICHARDSON. Yes; a claim for a horse or cow?

Mr. CALKINS. Well, the live-stock contract provides for specifications as to the value of the animal at the time of its shipment, and settlement of claims would be based upon that stipulated valuation.

Mr. RICHARDSON. That is what I am after. You have a stock agent, don't you, who first takes note of the destruction of animals?

Mr. CALKINS. Yes, sir.

Mr. RICHARDSON. And he brings to you the valuation?

Mr. CALKINS. Well, the contract shows that; the bill of lading for the live stock will show the valuation.

The CHAIRMAN. I think you are talking about different things.

Mr. RICHARDSON. I mean when a railroad runs over an animal.

Mr. CALKINS. I do not handle those cases.

Mr. RICHARDSON. That is a great question down in our country, and both sides have committed great blunders, both the railroads and the people. It has brought about a very bad condition of affairs.

Mr. TOWNSEND. When you have a case of undercharge on a freight shipment you are not permitted to pay those indiscriminately, are

you? Do your rules provide that each claim agent can pay that undercharge?

Mr. CALKINS. The undercharge?

Mr. TOWNSEND. Yes.

Mr. CALKINS. That would be money due us.

Mr. TOWNSEND. Can you settle those claims and receive the money?

Mr. CALKINS. We must collect those claims if we can, even by process of law, if necessary.

Mr. TOWNSEND. That is, the law compels you to do that?

Mr. CALKINS. That is right.

Mr. TOWNSEND. Does the commission grant you any leeway in that matter?

Mr. CALKINS. They do not grant me any leeway; I must collect them if possible; in fact, refer them to our legal department for them to collect, if possible; they make those attempts but very often fail to collect, probably largely through the lack of financial standing of the consignee.

Mr. TOWNSEND. As I understood you, you have very few of those except in cases of underweights or something of that kind, as you stated?

Mr. CALKINS. Of course, in the delivery of freight undercharges are coming up as corrections, which go through the auditor's accounts every day; there are as many undercharges as overcharges; those adjustments are going on constantly; I do not handle any of those cases; but where they fail to collect an undercharge the agent at the delivery point is charged with that amount in his accounts and he must seek relief through me; he therefore makes a claim for that amount, and I take it up as a claim in favor of the agent and undertake to collect it from the consignee; failing in that, it is referred to our legal department for their action.

Mr. FAULKNER. There is another gentleman here, representing the New York, New Haven and Hartford road, but the matter has been gone over so thoroughly he does not see any necessity for occupying the time of the committee.

The CHAIRMAN. Mr. S. H. Cowan was to have been heard on Wednesday, but he has forwarded a statement that owing to the illness of his father he will not be able to be here, and he has sent a written brief which, without objection, the stenographer will insert in the hearings as Mr. Cowan's statement.

(Following is the statement referred to:)

#### **STATEMENT OF S. H. COWAN, ATTORNEY FOR AMERICAN NATIONAL LIVE STOCK ASSOCIATION.**

As the attorney and representative of the American National Live Stock Association, composed of organizations of stock raisers and shippers, and principally west of the Mississippi River, and the Cattle Raisers' Association of Texas, an organization of cattle raisers in all Southwestern States and Territories, in behalf of both organizations I submit the following brief of argument in favor of certain amendments to the act to regulate commerce and in opposition to the proposal to take from the Interstate Commerce Commission the duty of defending and enforcing its orders and the control of the

same and to turn it over to the Department of Justice, excluding the commission and interested parties from appearance or participation in such suits.

Close relations with leading shippers' organizations throughout the country during the contest which resulted in the Hepburn bill and a knowledge of their interests leads me to say that I have no doubt they would, if the matter is brought to their attention, indorse the position which we take.

Those whom I represent have enormous interest as shippers, and they have spoken in definite terms by resolutions recently passed at the annual convention of the American National Live Stock Association, held at Denver, which resolutions have been duly filed with this committee. I beg to refer to the same and to request that they be incorporated as part of the record in connection herewith.

As to the provisions respecting interownership or acquisition of stocks and bonds of other carriers, and as to limitations on capitalization, I merely express the belief that, while a law should be enacted upon the subject, it is too important to attempt unless it be embraced in a most comprehensive act and in connection with a plan for valuation of railroads. These subjects are foreign to the design of the present act and foreign to the object of my argument.

## I.

The act to regulate commerce might with material advantage to the public be amended in several of the particulars named in both the Mann bill and the Townsend bill, though in my experience and observations the enforcement of the present law—its administration—is not sufficiently advanced to enable us to wisely amend it in but few particulars.

The most important amendments which, it seems to me, are needed are the following, in the order named:

(1) To empower the commission to suspend the taking effect of a change in rates, classifications, tariffs, and rules and regulations, pending investigations, without limiting specifically the time by law.

(2) To so amend the long and short haul clause as to make it effective.

(3) To empower the commission to deal with terminal and all special charges which are in addition to or in connection with through rates, so as to make the total rates and special charges reasonable, without being obliged to consider the terminal or special charges separately and be obliged to make the special charges high enough to be profitable considered apart from the total of the rates for the through transportation under the present law as construed in the case of *Interstate Commerce Commission v. Stickney*, recently decided by the Supreme Court, and in the case involving reconsignment of hay. The commission can not really regulate terminal and special charges by considering the compensation embraced in the through rates as covering in reality the whole or part of the special vice. (This is very important and will become more so from time to time.)

(4) The duty to quote a rate and liability for misquoting it on application of the shipper to the commission, together with a penalty clause, should be provided for.

(5) The power to completely control the making of through routes and through rates, and rules and regulations governing the same so as to give shippers the choice of routes and compel interchange of cars where that appears necessary to secure the best service, but at the same time to safeguard the railroads in control of its business on joint rates and divisions and use of equipment. I would not give the shipper the right by law to route his freight; simply give the commission power to regulate that.

The shipper's right of routing to be in the commission's rules. The power to require interchange of loaded and empty cars is absolutely essential to the use of through routes.

(6) The valuation of railroads is an absolute necessity to any limitation of capitalization and to the application of the doctrine of fair return. Every important case involving systems of rates or rates on traffic of large volume involves the question of value, and the time required forbids intelligent effort to show it in a given case.

(7) The law should declare that the orders of the commission are to be presumed to be correct until the proper court has found that the commission has acted beyond its powers, either in violation of law or constitutional property rights, and that no opinion or conclusions of witness upon the facts shall be admissible against that presumption. As it is, these cases are tried in court largely on expert opinions and conclusions of witnesses, when in theory the commission is the expert body to whom the law commits the matter of opinions and conclusions, on every phase of the case on all facts essential to support its findings. In its annual report, December 21, 1909, at pages 5 to 10, the commission sets out the amendments which it recommends.

I wish to direct the committee's attention to the two particulars wherein I am fully persuaded the Townsend bill will, if enacted, be harmful to most effective administration of the law and materially weaken it, viz:

First. The creation of a special court of the sort and as proposed.

Second. Taking away the duty of the commission to defend its orders and to supervise the preparation and trials of cases involving the validity of its orders.

For reasons hereafter given I wish, in behalf of the western live-stock interests, so far as represented by me, to protest against these propositions.

In doing so I wish it clearly understood that I do not question that it is the intention of the proponents of these measures to aid rather than retard, to benefit rather than injure the administration of the law. But from extensive practical actual experience I am certain that the proponents are in serious error, probably arising from a failure to consider sufficiently the practical operation under the law as proposed. I trust that what I shall say will be treated in the spirit intended; that is, to do the best for the shipping public and do it fairly to the railroads, to the end of effective regulation.

## II.

1. *Commission and the courts.*

The relation of the commission and the courts should be based upon the fundamental consideration that the commission is the best tribunal and the most capable to regulate carriers which Congress can devise, and that neither the courts nor any other department should have power to interfere except where the commission acts outside the scope of its powers. That is (1) where it acts not in accordance with the form and manner prescribed by law, and (2) where its action violates a constitutional right.

So far the act has not been construed by the Supreme Court to define the limits of the power of the commission over rates, or the courts over the commission, but from the language of the act and the decisions which have been rendered by the Supreme Court, it appears certain that the courts can interfere only in the cases mentioned above.

If so, and that will be fully determined within a year, there will remain little for courts to do in cases brought to annul the commission's orders.

That power will be exercised only in similar cases to those involving enactments of state legislatures and actions of state commissions. For practical purposes the trial will involve a sole question of fact—cost of service.

Cases not dependent on cost of service evidence will generally be those dependent on questions of law.

2. *The cost of the service is generally the question to be tried.*

Unless the cost is clearly shown to be such that the orders are confiscatory, no relief can or should be had. It needs no trial to show what the earnings are; that is not in controversy.

All such cases are suits in equity, and at last the Supreme Court must, as it has, determine the merits of the controversy. It matters little through what court the cause reaches the Supreme Court.

And, again, after the Supreme Court shall have determined a few of these cases involving different phases of the law and administrative action of the commission, its decisions will be followed as precedents by all courts alike.

3. *If a special court is established let its jurisdiction extend to suits to annul state rates, etc.*

When we consider that the number of transportation services rendered within a State, beginning and ending there, equals, if it does not exceed, the separate services of interstate traffic in such State, and in the aggregate of all States exceeds in importance the interstate traffic, there would seem to be no good reason for having a different United States court pass upon the rights of the people and the carriers with respect to the one character of freight or passenger traffic to the other, where is involved in each instance the



same question, namely, Are the rates or regulations made by state or interstate commission confiscatory under the fourteenth or fifth amendment?

That it is essential in both cases for the courts to exercise the injunctive powers is not questioned; Congress could not prevent it; but there can be no pretense, in my opinion, that a special tribunal should be provided to exercise that jurisdiction in the one case and not in the other.

On account of the foregoing matters, and because it is unnecessary and would afford the shipper no relief, I am opposed to establishing a special court as proposed.

#### *4. Special tribunal for railroads, not for shippers.*

The court proposed would hear no cases under the act to regulate commerce except suits by carriers to annul the commission's orders. It would be a special court for the railroads, because no suit by the commission to enforce its orders is necessary, because its orders take effect under penalties, nor has any such been brought, so far as I am aware. Carriers will in all contested cases begin the proceedings rather than invoke penalties. No new remedy or powers are proposed to be given this court for shippers or carriers. If it were conceivable that a shipper might go before such court in some sort of case seeking relief, no one can point to a case wherein any such hardship exists or demand for relief by court review for shippers as to justify establishing such a court, nor is that claimed.

#### *5. Special court not demanded.*

The shippers whose rates have been prescribed by the commission and contested in court, and whom we would expect to first complain, are not demanding it.

The Interstate Commerce Commission, charged with the duty of reporting needed amendments, have not recommended it.

Whence comes the demand for such a court?

If it exists on behalf of the parties directly at interest, it must be from the railroads, yet they have, it seems, been silent on the subject. That it is presented to you by the message of our honored President and at the suggestion of the honorable Department of Justice in a perfectly honest desire to benefit the public in the premises I have no doubt, but I can not believe it will accomplish any good to the public.

#### *6. Will not be an expert court.*

It is expected that it will furnish a court which will become expert in the trial of such causes. As to this the bill fails, because they are not to be selected in that view, and by the method of retiring each judge by the time he acquires expert knowledge that is excluded from consideration.

No improvement on this line is probable.

It will not be expected that the Chief Justice will endeavor to select these judges because of supposed leanings. If so, the very conception of it is founded in wrong and fraught with danger. If such a thing were conceivable (and it is not) that the Chief Justice

would stoop to that, no man of experience can doubt that soon the court would be made up of judges of pro-railroad tendencies.

Such a court can not be peculiarly expert as to what the law of the case is, because the Supreme Court will determine that. The bill does not propose that it try cases differently on the facts to present circuit courts.

*7. The trial on the facts of each case.*

The case on the facts must be proven in the usual way. The court is not given, and could not be given, power to find the facts from its own knowledge; if so, it would at the very outset supplant the commission by exercising its prerogative.

The court must take its facts from the proof before it in each case. So, what advantage can it have in that regard over the circuit courts? If it is supposed that it will give different weight to or draw different inferences from the facts than the circuit courts, in whose interest may it be supposed to do so? Would the public have any assurance of being benefited? Practically every rate case will be determined by an infinite multitude of detailed facts and opinions of witnesses pertaining to railroad operations, earnings, expenses, and rates. The bill does not propose that this court shall possess superior qualification to circuit judges generally to decide the questions of fact and could not do so. The Supreme Court will still be as supreme over such decisions, both as to law and facts, as it is over the circuit courts now.

The advantages, therefore, to the public of having this special court for expert purposes are not apparent, and it is not at all unlikely to turn out to be to the contrary.

*8. Uniformity of decision will exist in circuit courts to same extent as in a special court.—Can only apply to general principles.*

It is supposed that it will bring about uniformity of decision. This advantage is fanciful rather than real, because the Supreme Court will make what uniformity there is so far as the law and general principles are concerned; and as to the facts, it is absurd to talk about decisions of cases which rest on different facts being uniform on those facts. All courts will conform to general principles announced by the Supreme Court.

Don't forget that in every case involving the reasonableness of rates or whether a discrimination is unjust is purely one of fact. (See *Texas and Pacific Railway v. I. C. C.*, 162 U. S., 197.)

If the question is one of law, like the *Burnham-Hanna-Munger* case, or the *Chicago live-stock terminal charge* case, or the *coal car distribution* case, the Supreme Court ultimately determines it, and such decision will be followed by all courts.

*9. The special court can not materially expedite the final disposition of cases.*

It is said that the main object is to expedite the disposition of cases. In the first place, there has not been that delay in hearing cases in the circuit courts which would call for the establishment of a special court to remedy the evil. No provision of this bill on

that line is peculiar to a special court, which might not be as well applied to circuit courts.

In the second place, the delays in the Supreme Court are of much greater importance and are not possible to remedy, so long as it has so much important business requiring equal expedition.

Cases involving millions of dollars, and in which are wrapped up the material interests of communities, industries, and the great arteries of commerce, can not be guessed off. It takes much time and labor to prepare such cases for trial and to try them and to give due consideration to the facts. The commission's orders ought not to be set aside except on clearest grounds, in which both sides are fully presented by evidence of the most reliable character and after mature analysis and consideration of it. He who thinks this can be done quickly is in error.

Adapting the same latitude as to making proof—presenting the facts—and using that care which ought to be used by the court in getting at the facts, it is inconceivable to me that the special court can so materially expedite the hearing and determination of such cases as to make it worth while compared to the circuit courts. Particularly must this be true when the Supreme Court can not expedite these cases because it has so many of as much importance entitled to be expedited.

Will there be any material difference in the date of ultimate decision? That is conjectural and unlikely.

*10. Expediting feature fanciful—Manner of trial—Use of master in chancery necessary and no improvement likely.*

And, again, how is this new court to expedite a case? Are all the judges to sit in hearing each case—in taking the evidence? If so, while the court is hearing the evidence in a California fruit case what becomes of the fertilizer case in Florida; or while it is hearing a cattle-rate case in Texas, what becomes of the lumber case in Oregon? If judges each go out and take evidence in a case, when will the others read it? The question being one of fact, you must suppose each judge will read the evidence and analyze it, else it will be a one-man decision necessarily. Is that any better than to have a one-man decision out in the circuit from which the judges come?

If this court appoints masters in chancery to take evidence and report findings, what reason is there to suppose it will be done better than by masters appointed in the circuit courts?

I have no doubt that this court must, in most cases, appoint masters in chancery to take the evidence and report the facts, as is at present a prevailing practice recommended by the Supreme Court in the Tompkins case (176 U. S.), and that it is the only feasible way to do the business. That this will result in a set of masters is probable.

The case then will come on before the court upon the report of the master. It would be to him we should look as the expert.

From all of this practical view—and it must come about—it seems to me the expediting feature—indeed, the supposed advantage of the court at all—vanishes into thin air.

## III.

*1. The commission should put its rate into effect and defend its orders according to its judgment.*

What good is an order of the commission prescribing a rate or practice until it becomes effective?

If the commission is competent to prescribe rates or regulations, and having that much interest and trusted with that responsibility, it ought to be competent to procure their enforcement or to defend them. The present law requires the commission to enforce the provisions of the act. Who objects?

Has any shipper objected to the commission having charge of the defense of its orders? Presumptively, the order in the first place is correct and lawful, and no power should exist anywhere short of the courts to decide otherwise. Is it a part of the scheme of correct regulation that after the commission makes an order the Department of Justice shall pass on the correctness of it?

On the facts, every suit to annul the order must be defended upon and by the facts gotten up by the commission, which, in the first instance, were proven or which it knew. That is the defense where the order is assailed on account of the dollars and cents involved, where the question is whether rates were made too low.

The commission should be charged with that duty and held to full responsibility of sustaining itself. No divided responsibility should be allowed.

Of course the Department of Justice presumptively knows the law, but it has no special knowledge of railroads, rates, etc., which would fittingly qualify it to say that the commission had not done its duty either in law or in fact, and that its order would or could not be defended. Nor should the law leave it where the commission, having made an order which is enjoined, might say that the Department of Justice didn't properly defend it.

*2. Responsibility and duty should not be divided. Dividing responsibility in such a case will leave it where no one can fix the responsibility.*

I assert that either in the commission's office or in the offices of the railroads exists practically all the evidence there is to defend an order of the commission against attack. If it exists elsewhere in peculiar cases the commission ought to know where to point to it; appoint its examiners to get the facts. To relieve that body of the duty of defending or enforcing its orders is not demanded by shippers or the public, and unless the railroads want it, who does? Who must benefit, in your opinion? What case has been improperly handled by the commission? It is absurd to say that the commission is a proper tribunal to fix rates, to investigate, to find the facts and make the order, and at the same time can not be trusted to defend its orders and have full charge of doing it, when the defense depends on the facts best ascertainable—only ascertainable by that body or in its office or by its agency.

The party complainant who succeeds in getting the commission to prescribe a rate will always be willing that the commission shall assume the responsibility and defend it in court, and to prepare the case to that end, or procure it to be done.

If complainant wishes to appear by counsel in court to sustain the order, no one should object.

Since the commission must prepare or have prepared the evidence, why should it not proceed according to its judgment in selecting a lawyer and agencies which it deems best to conduct the case, or call on the Department of Justice, at its discretion?

It is inconceivable that the commission should appropriately be authorized to employ attorneys in its own investigations to get at the facts on which it acts in making an order, and at the same time should properly be denied the power to do the same thing in getting at and presenting the same facts to defend it when attacked in court. What merit can there be in the expression that it should not be judge and prosecutor, where it is expressly authorized to make an order but not to defend it?

The proposed bill requires suits to set aside the commission's order to be brought against the United States. Why so? The act of the commission is one department only; others are not concerned. The only effect of this proposed change is that by doing so the Department of Justice, under general law, controls all suits against the United States, and that would leave the commission and the public with no voice, part, or responsibility except what the department exercises.

*3. The commission should not be subservient to the Department of Justice.*

To exclude the commission from handling its cases will prove to be a disadvantage to the public and an advantage to the railroads. It is the first step in the direction of bringing the commission's decisions into the political departments of the Government.

The commission must feel in the natural order of things that it should first inquire of the Department of Justice whether a given order is, in the opinion of that department, one that it will defend if attacked.

In the administration of this act the commissioners will differ in opinion and orders be made by a bare majority.

The wisest and best men differ on facts and law; the Supreme Court is an illustrious example.

Honest men do not like to urge propositions contrary to their judgment. Bearing these things in mind, it must result that instances will happen, most likely in most important and hotly contested cases, where the Attorney-General will differ from a majority of the commission as to the correctness of its decision, either as to its conclusions of law or facts. Honesty will command him to say so. The more honest he is the more he will feel it his duty to do that. What will be the result? Rather than spend \$10,000 of the Government's money to defend the case which is brought to set aside the order which he believes to be invalid, what will the Attorney-General do? What must he feel to be his duty?

How else can it be under the proposed bill than that the Department of Justice must therefore sit in judgment on the commission's

orders, at least in doubtful cases, without any full faith and credit clause applicable.

Let the commission control the litigation as the client for the public. Let the Attorney-General represent the commission, but according to its judgment.

Do not place the duty upon nor make it the prerogative of the Attorney-General to decide what shall be done with the commission's order.

I am not speaking of our present Department of Justice or any particular one when I say it is a political department, nor do I mean to criticise either. I mean that it will always be as it has been—made up politically by the dominant party with policies to suit that party. To relieve the Interstate Commerce Commission of responsibility and subject it practically to such political department would tend to disarm the commission and the shippers in times of political distress where considerations of that sort might be given the very greatest weight.

*4. No discretion should be lodged in the Department of Justice as to defending the orders.*

It must be constantly borne in mind that it is for the commission to determine what order is lawful and proper. The theory of the law is that its decision settles it unless it act beyond its power or so as to interfere with constitutional property rights. This latter is generally the ground of suits against commission's orders, state and interstate, and only the courts shall have the right to decide otherwise, and that because Congress can not otherwise enact.

The commission is as supreme in its department as Congress, and the complainant who brings the complaint and secures an order and the public has the right to have the order of the commission urged before the court as valid and with the same presumptions of rightfulness as an act of Congress. Yet, under this bill the Department of Justice would have the power to do as it pleases in the matter of defending such order if it concluded that it was not valid. It is no answer to say that it would not so exercise the power; if not, why should it be conferred?

If Congress makes the mistake of excluding the commission from defending its orders, then it is imperative that a proviso be added in substance as follows:

*Provided*, That every order of the commission shall be presumed to be lawful and proper, and it shall be the duty of the Attorney-General of the United States to defend and enforce it in all particulars as made.

If parties against whom such order is made shall deem it invalid, the law affords ample opportunity to move for a rehearing or modification by the commission, or it may modify or amend on its own motion.

It is no answer to this proposed amendment to say that the Attorney-General would naturally pursue that policy; for, if so, there is no harm in specifically so declaring in the law. The commission being peculiarly qualified to pass on the facts and circumstances, and to make its order accordingly, ought not to be embarrassed by the fear that it will not be fully defended to the fullest

extent on the full presumption that it is valid until the court otherwise decree, should the Department of Justice conclude that the order should not have been made.

The remarkable thing about this bill is that it provides in section 5 that "the Interstate Commerce Commission and its attorneys shall take no part in the conduct of any such litigation." Why not? Who would benefit by this provision?

It will have to take part to get up and produce the evidence or it can not be done. Could the Attorney-General employ one of the special attorneys of the commission under this provision?

Section 4 of the Townsend bill providing for suits to be brought against the United States, and section 5 of the bill, which gives the control of all litigation to the Department of Justice and excludes the commission therefrom, should be stricken out, and in lieu thereof the following, in substance, should be inserted:

It shall be the duty of the commission to prosecute all suits and proceedings necessary to secure the enforcement of its orders, and to defend all cases brought to set aside, annul, or enjoin the same, or any of its acts, proceedings, or requirements.

It shall be the duty of the Attorney-General of the United States, in person or by his assistants or special counsel which he is authorized to employ, and to fix their compensation, to be paid out of the appropriation for the Department of Justice, to prosecute and defend all suits brought to enforce, or to annul, set aside, or enjoin the orders of the Interstate Commerce Commission: *Provided*, That the Interstate Commerce Commission shall have the right to employ special counsel where it deems it to be necessary or proper in any such case or in any investigation or proceeding under this act or otherwise, in the performance of its duties, paying the cost thereof out of its appropriations: *Provided further*, That where any suit or proceeding is brought in any court to annul, set aside, or enjoin any order, rate, rule, or regulation prescribed by the commission, the party or parties to the proceeding before the commission resulting in the order shall have the right to appear in any such suit by counsel in behalf of sustaining such order, under such terms as the court may prescribe, as to the number of counsel and as to pleadings, production of evidence, briefs, and argument, so as not to interfere with the orderly conduct of the case by the Attorney-General or special counsel employed by him or by the Interstate Commerce Commission. Nothing herein shall be deemed to relieve the Attorney-General or district attorneys from other duties prescribed by law, nor to interfere with the court before which any such case may be pending from permitting parties interested in the controversy from appearing by counsel if the ends of justice shall seem to the court to require it: *Provided also*, That the commission, or Attorney-General in its name, may intervene in any case in any court of the United States wherein the powers, orders, or acts of the commission affecting the public are involved.

Thus the duty will be upon both the commission and the Attorney-General.

The foregoing amendment should therefore be incorporated in whatever bill is passed. Once incorporated in the law, there can be no doubt of the harmonious conduct of all litigation, and that the interest of the public will be fully protected.

#### IV.

#### *The right of the shipper to be heard in court.*

It is a fundamental principle of a free government that a party whose interest is directly affected by proceedings in court or before any other tribunal shall have the right to appear and be heard by counsel of his own choosing. While this is not directly denied in this bill, it is inferentially. Certainly it is not guaranteed. You might as well exclude the parties at interest as the commission. The

proceeding is not to be compared with other proceedings because they are dissimilar. Here the complainant affected directly it may be, if not, then acting in representation of those who are, files a petition with the commission and proceeds to present his case. The commission makes an order, we will say, reducing a rate, and the railroad company files a petition in court for injunction. The rights and interests of the parties, the facts on which they depend are practically identical before the commission and the court. This proposed law steps in and says the proceeding shall not be defended by the commission, but that it shall be brought against the United States, and that the Attorney-General shall take entire charge of it. Probably the case required weeks or months in preparation. Yet the complainant and commission must stand aside while the attorneys for the railroad, who are familiar with the given case, on five days' notice bring on a hearing on the facts for injunction and let it be handled by some attorney who could not possibly be prepared to do it from the want of preparation. Every such case—or practically so—depends on the facts, which are voluminous and difficult to understand and analyze. The result can be readily imagined.

The commission, knowing the case from its inception, can the more readily employ the means to defend it. Having the motive to sustain its orders, it will be best able to direct what to be done. The law wisely provides that it may employ special counsel, and it can best judge whether that is necessary in the given case.

These cases generally involve large amounts of money—even millions of dollars. The shipper is no less the real party at interest before the court than before the commission, and as such should have the right in the one case as much as in the other to appear and represent those rights, if he chooses to do so, in any court where the order of the commission is called in question. Of course, there is a public interest and the interest of other shippers, but they are identical and both rest upon the validity of the order. The interest which causes a complainant to file a petition with the commission and to prosecute it to a successful termination continues until the order goes into effect. While it should be the duty of the commission to put it into effect and defend it, there can be no doubt that the party complaining before the commission should have the right to continue to defend the same when attacked without asking anybody's permission, in exactly the same manner as if the proceedings were brought directly against him as a party defendant.

Let the present law be so amended that the real party at interest on the shippers' side may appear and defend his interest just as well as the railroad. It may be objected that as there are usually a number of complainants it would put too many lawyers in the case. That would apply more to the railroads. Each of them are, as the records before the commission will show, generally represented by separate attorneys, while the complainants generally are not, but as to that, the difficulty is imaginary, because the court constantly has that to deal with in a multitude of cases, and is entirely able to do it by rules made for that purpose.

It may seem, too, that to allow complainants' counsel to appear in court might conflict with the Attorney-General's control of the case, but that is fanciful, unless the Attorney-General should not wish to represent the case as made by the commission's order. Both



the attorney for the Government and complainant would necessarily have a common interest, viz, to enforce the commission's order, hence there could be no conflict so long as both pursue that course.

Now, who must get up the facts—the evidence, generally consisting of statistics and reports, examinations of books, calculations from figures evolved from records and books, requiring experts to make up and tabulate, work of accountants, engineers, stenographers, data pertaining to cost of doing business, profits, cost of labor and materials, not only on railroads but of the shippers' business.

It seems to me to be incomprehensible that the commission and its useful and efficient organization, accustomed to the work, should be relieved of doing this by law, and the parties at interest excluded from the case. I assert that no attorney can properly prepare and defend any rate case involving the ordinary questions as to facts indicated by the above enumeration without the aid of the commission's force—indeed, must rely almost wholly upon it.

Therefore, if the commission is relieved of responsibility, who can command it to prepare the necessary facts and put its special accountants or other agencies at work to dig them up? Shall the law deprive the shipper of his victory in that fashion?

It all comes to this: The real defense will be necessarily under direction of the different departments of the commission, who must show the attorneys what to do and direct what to prove and how to do it and why it should be done. It is a matter of fact, not of law; so it matters not how great a lawyer a man may be, he is not on that account, merely, capable to defend or represent such a case without detailed preparation of facts. He may search Blackstone or Kent or musty books in vain but receive no light; it is to be evolved from ascertaining the facts and developing the case from operating, traffic, financial and other statistics, and comparisons of rates and results of railway operation and business and commercial relations. This preparation has to be made by and through the commission.

The conclusion of it all is: (1) that in the first place this bill proposing the new court should not be passed; (2) the Department of Justice should not have exclusive control of cases brought to set aside the commission's orders; but the commission should control it; (3) if both positions be overruled and bills establishing such court and turning over these court proceedings to the control of the Department of Justice, excluding the commission, then there should be added an amendment in substance:

*Provided*, That parties complaining in the proceeding before the commission and who appeared and prosecuted the same shall have the right to appear by counsel before the court in cases involving the validity of the order of the commission, under such rules as the court may prescribe.

In fact, this provision is necessary under present practice.

## V.

*Review of typical cases in support of points urged in the foregoing argument.*

1. In favor of empowering the commission to suspend tariffs and changes in rates.

A single reference will serve this purpose:

The Railroad Commission of Texas *v.* Atchison, Topeka and Santa Fe Railway Company et al., pending before the Interstate Commerce Commission.

On August 10, 1908, all southwestern lines advanced rates between Mississippi River and Missouri River crossings, the Lakes, and eastern territory about 7 per cent. That was the first advance in pursuance of a determination to make general advances elsewhere in the West.

Complaint was made by the railroad commission of Texas, and many shipping organizations and shippers intervened, not only from Texas, but from St. Louis, Chicago, and elsewhere. The commission spent several weeks taking evidence. The record is very large and covers railroad valuations, values of supplies, cost of labor, fuel, details of operating expenses, statistics as to finances, operation, capitalization; in fact, a compendium of statistics for 40,000 to 50,000 miles of railroads. Also as to water competition via the Atlantic seaboard, state regulation and rates, taxes, restrictive laws, etc., for half a dozen States.

In order even to be considered it was required to be abstracted and printed. That has been done, and it is set for argument.

In the meantime the Texas City Steamship Line from New York to Galveston put in lower water rates than those previously prevailing, so that much freight was shipped from Ohio and Mississippi valleys via New York and Galveston, and in many lines channels of trade diverted to Atlantic seaboard and trade enjoyed by merchants and manufacturers at St. Louis, Chicago, and Cincinnati was lost to them; in other cases they had to absorb the difference. This advance was by concert and agreement, and an agreement with the Mallory and Morgan steamships lines made in New York.

Now, that case illustrates two points:

First. That the commission should have the power to have stopped it until it could investigate it, and the right to have sufficient time to do it.

Second. That railroads should not be permitted to agree to any such advances and destroy competition.

The power to do so is the power to destroy commerce, industries, and communities. Indeed, in this case the rates were so advanced as to stop shipments on some articles of commerce produced at St. Louis, and turn over the trade to other concerns. The agreement also closed the high seas, dividing the territory in effect which must go via New York or Mississippi River crossings until the Texas City Steamship Company became a factor, and then the Mallory and Morgan lines met its rates.

I lay this down as an indisputable proposition: (1) These roads violated the anti-trust law in public and outrageous fashion; or (2) if

they did not, they exercised more power than ought to exist. If the former, they should have been prosecuted, as complaint on that ground was lodged at Washington with the commission and known to the Department of Justice; if the latter, then they ought not to place its stamp of approval on it by legalizing it.

The commission has held, and that has been sanctioned by the courts, that where rates are made by agreement and competition stifled, they are presumptively unreasonable. Shall we legalize that which has always been regarded as a restraint of trade?

A careful analysis of the proposition to permit agreements on rates between competing carriers will show that it legalizes monopoly and destroys competition.

What ought to be provided by law is no rates, classifications, or regulations, by competing lines on competitive business, shall be agreed on unless and except the schedules be submitted to the commission and approved, and then that while the rates become legal the agreement shall not be binding on anyone for any purpose. That is, the agreement should not go beyond agreeing to submit a scale of rates, classification, etc., to the commission, which become legal by being permitted to be filed, whereupon the agreement ceases, never having extended beyond the process of getting together the schedules to be filed. In fact, they do that now, with no supervision by the commission.

## VI.

### *A case in court.*

Missouri, Kansas and Texas Railway et al., v. Interstate Commerce Commission, in United States circuit court, St. Louis. Suit to set aside order reducing cattle rates.

This case involves the two questions:

(1) Whether rates prescribed from Texas, Oklahoma, New Mexico, and Colorado to principal cattle markets, Kansas City, St. Louis, Chicago, St. Joseph, Omaha, New Orleans, and from Texas, New Mexico, and Oklahoma to Northwest range States are unreasonable or confiscatory.

(2) Are they unjustly discriminatory compared to other rates?

After the case was decided by the commission, April, 1908, it gave the roads to understand that it would give them till July 1, 1908, to conform their schedules to the decision, which simply removed the advances made in 1903, leaving as the commission's maximum the rates previously in effect, which were as high as they had ever been, generally higher.

The railroads set to work getting up data for application for injunction. Not having taken any steps to conform to the decision, the commission in July issued an order prescribing a schedule of maximum rates, which, instead of obeying, the railroads in September filed an application for injunction before the circuit court of the United States at St. Louis, which came on for hearing, and in order to give time to hear and determine the motion for preliminary injunction, the commission extended the time for its order to go into effect till November 17, 1908.

The court refused to grant the temporary injunction, and the commission order went into effect and is now in effect. All of this required

much time and labor, and could not have been expedited more than it was by any court and deal fairly with the case and attorneys.

Thereafter, and in the early part of December, the court, having been notified that plaintiffs wished to proceed to take evidence and try the case on its merits, held a session to provide the method of doing it. Both sides agreed that it would take at least ninety days' actual work to take the evidence and considerable time in preparation of evidence and collecting it. The court decided to appoint a special master in chancery to take the evidence and report his findings of fact and law. Not long after that the master was selected, probably in January, 1909. About that time the commission was taking evidence in the Texas-St. Louis common point case, mentioned above, covering the same roads as were plaintiffs in the case in court, which was being prepared by the railroads, in the Interstate Commerce Commission office and by the railroad commission of Texas. Those hearings closed in February, 1909. The same counsel in part—that is leading counsel—were in both cases. The taking of testimony before the master began in March and was ended a few days before August 1, 1909. Thereafter there remained many documents to be prepared and filed to complete the case, which was done by September 1. The case was briefed by both sides and argued before the master October 21 to 28, inclusive. Since that date he has been engaged in making up his findings almost continuously.

The record is nearly 10,000 typewritten pages of oral evidence, 800 exhibits, many of them with many pages, exceeding in bulk and matter by far the oral evidence, containing, it is safe to say, millions of figures.

One might say, Why did you not use the record before the commission? The answer is, (1) We used a small part of it; (2) it was taken from one to two years or more before, and operating, financial, traffic, and many conditions had so changed that it would have been worthless to a large degree. The question before the court pertains to conditions mainly after the order took effect, November 17, 1908, and the year previous.

The case is alleged to involve a million dollars a year.

Now, take this recital as an object lesson and it proves:

(1) A court, special or otherwise, can not take its time hearing the evidence detailed.

(2) It can only proceed through a master or some such method.

(3) To exclude the commission from having charge of the defense and put in some one not familiar with the case, while the attorneys for the railroad continue right along with it, would be suicidal to the proper handling of the case and a manifest outrage on the shipper and the public.

(4) The shippers who prepared and prosecuted the case before the commission should have the right to appear and defend the order in court without consent of anyone, under such rules as the court should make.

(5) There could not be any more material expedition than already shown by a special court having other cases, compared to what the St. Louis court has accomplished.

(6) There can be no precedent decision to decide the main fact except those general principles as to which the circuit court and special court must alike look to the Supreme Court decisions to find

and apply; or, in absence of such, endeavor to evolve and apply such as that court will in the given case announce.

(7) The court can apply no expert knowledge of the facts in this case to one involving lumber, cotton, grain, or other traffic next year.

It may be said that this is an unusual case, but that is not true in the sense of the scope of it, the importance of it, the questions involved, or time and labor required.

For example, take the Texas rate case, first cited, and suppose the commission holds the advances wrong and orders in the previous rates, and the very same railroads and same attorneys sue to set aside the order. Similar facts, but for a year or more later, would be shown, and a similar course would take place. You must remember that, as I have before emphasized, the trial is on what it costs for the service compared to what the railroads get. Thousands of rates, hundreds of roads, an infinite number of conditions, operations covering years—all of it admissible and material on the main fact.

Again, take the Missouri case, tried in the federal court, Kansas City. The record is even greater than in the Cattle case. Take the Arkansas case, in which taking of testimony has been going on for some time. Both are dependent on the main question, What does it cost to perform the service, and what is the property worth?

Again, if the Burnham-Hanna-Munger case had been tried on lines required by the circuit-court decision, the whole rate system from New York to the Missouri River would be involved.

The quantum of evidence in such cases is almost without limit and can not be excluded. With auditors and clerks of various departments the railroads bring forth a mass of evidence which no one sees or knows in detail till it is presented in court. That it is made up from figures with a view to prove the railroads' contention no one will doubt. To meet it is the duty of the commission and the right of the shipper and the public.

## VII.

### *Cases dependent on questions of law rather than facts.*

1. Take the Chicago live-stock terminal case, decided by the Supreme Court November 29, 1909. (See the commission's review of the case in its annual report of December 21, 1909, pp. 31, 32, 33.)

The point decided was really one of law as decided, viz: That the terminal charge in itself being reasonable if considered separately from the through rate to which it always applied, the commission could not reduce it because the pay for the service was in fact embraced in the through rate except what the commission permitted the railroads to retain, where the tariffs separated the through rate and terminal charge.

The lesson taught here is—

1. The commission is practically without power to regulate special charges when imposed in addition to through rates, which previously embraced the compensation, unless the special charge is above the cost of the service and produces a profit in itself. In other words, it can not correct the wrong by requiring that it be righted where committed, but must permit it to go unchallenged or attempt to correct it in the through rate. It can not say that under the circumstances

no special charge imposed for switching or a bridge charge or re-signing charge is wrong unless it finds the amount of it excessive.

This should be corrected by so amending the act that the commission shall have power to decide that a special charge in addition to through rates shall not be made where, in its opinion, it would be unreasonable to do so, and to so regulate the amount of special charge as to make them reasonable when considered in connection with the through rate, whether in themselves reasonable or not.

1. In all such cases as this no special court could be of possible advantage.

2. The Burnham-Hanna-Munger case: This case was decided against the commission on the single point that it is without power to prescribe rates if the purpose and effect was to create artificial trade zones and disturb the established course of commerce. (See review of the case in commission's annual report.)

The limitation on the power of the commission as here announced is a question of law, and it requires a decision of the Supreme Court to determine it. Of what advantage would a special court be in such case over the average circuit court?

3. Take the Georges Creek coal case: Here the commission's order was attacked on the ground that the rates prescribed were unreasonable merely, there being no claim that they were confiscatory. A demurrer was sustained and that ended it.

The lessons are—

(1) No special court was necessary.

(2) To declare that a demurrer shall not be presented to such a bill is to impede the course of justice.

4. *Lessons from all the cases.*—Space forbids further reference to illustrative cases, but an examination of them all—and there are not many—will disclose that the foregoing are representative.

Wherein does experience thus reflected call for a special court?

Wherein does it show that the commission should not control the case?

Have the shippers interested complained against the commission for not having properly defended these cases?

What wrong has been done to railroads or shippers as to call for excluding the commission from these cases?

On the average, what assurance is there that the special court would have done better for the public good?

None other than a negative answer, looking at it from the standpoint of the public, can be given to these questions, except it be founded on the imagination.

## VIII.

### *Special amendments affecting live-stock shipments.*

There are received at the ten principal western markets over 800,000 cars of live stock per annum, and if there be added shipments to small markets and movements to ranges, pastures, and feed lots, it will exceed 1,000,000 carloads per annum. Good transportation service is vital.

Two things are most necessary: (1) That cars be furnished in reasonable time and with certainty, and (2) that good service be rendered.

On some roads this is done; on many it is not. Great loss results from bad service in either particular.

The detail of this matter has been several times fully presented to these committees, both in the Senate and House. I refer to hearings before the Senate Committee on Interstate Commerce, February 14, 1908, on the subject, "Prompt furnishing of transportation facilities," or Senate bill 3644, printed and a second edition issued as a public document. Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 13841, "Car shortage and reciprocal demurrage," on February 15, 1908.

Livestock organizations and shippers have repeatedly passed resolutions at public meetings demanding relief. They have sent experienced men half across the continent to inform the committees on the subject. This it would be useless to repeat, and now we point to this evidence contained in the above documents and ask of these committees that at least the Interstate Commerce Commission be empowered to make all needful regulations requiring exchange of cars between connecting lines forming through routes, and the furnishing of cars under rules to be prescribed by the commission, under appropriate penalties. And again, since slow and inefficient service is not only inhuman in most cases, but entails enormous losses, and since rates are based on reasonable service, which is as important as the rates, we ask the committees to also empower the commission to make rates and regulations to suit local and special conditions requiring a minimum speed limit for transportation of live stock wherever the commission deems that necessary to secure a reasonable service commensurate with the rate. The commission may prescribe a maximum rate for live stock. That means a reasonable rate for reasonable service, but where railroads, as they in many instances do, give an unreasonably slow service, the rights of the shipper are injured far more than if an unreasonable high rate was charged for reasonable service. The matter should be in the hands of the commission, for the rate is inseparable from the service. Once the power is given, it will be seldom exercised, for the roads will improve their service where need be, to avoid complaint to the commission, which may result in an order prescribing a minimum speed limit on a given road or through route and as to each road in that route.

We will submit in definite form to the committees the specific proposed amendments on the subjects.

(Thereupon, at 11.45 o'clock a. m., the committee adjourned, to meet Monday, February 14, at 10 o'clock a. m.)



# HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

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## PART XVII

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WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1910



**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES.**

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**IRVING P. WANGER, PENNSYLVANIA.**

**FREDERICK C. STEVENS, MINNESOTA.**

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**ANDREW J. PETERS, MASSACHUSETTS.**

## BILLS AFFECTING INTERSTATE COMMERCE.

### COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, HOUSE OF REPRESENTATIVES,

*Washington, D. C., Monday, February 14, 1910.*

The committee met this day at 10 o'clock a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. Is there any one here to be heard on the excess baggage bill, in favor of it?

Mr. HENRY P. DEARING. We simply understood there was someone to appear who would say why that bill should be passed.

The CHAIRMAN. Yes. We want to hear the proponents of the bill.

Mr. DERING. We want to hear some reason for the passage of the bill.

The CHAIRMAN. Is there any one here to be heard in behalf of the Coudrey excess-baggage bill?

Mr. DOUGLAS DALLAM. Yes, sir; Mr. Conboy, of New York, and one or two representatives who are on the way here.

The CHAIRMAN. You may proceed, gentlemen. It is our meeting time now, 10 o'clock. If anyone wishes to be heard, he can be heard now.

### STATEMENT OF MR. S. W. CAMPBELL, OF CHICAGO, ILL., SECRETARY OF THE NATIONAL SHOE WHOLESALEERS' ASSOCIATION.

Mr. CAMPBELL. With your permission, Mr. Chairman, I will read what I have to say.

The CHAIRMAN. Please take your place at the end of the table. First, tell us who you are.

Mr. CAMPBELL. My name is S. W. Campbell, of Chicago. I am secretary of the National Shoe Wholesalers' Association.

Mr. Chairman and gentlemen, we are before you to ask your favorable consideration on House bill 1491, relating to excess baggage. The purpose of this bill is solely to legalize as baggage, the same as personal baggage, commercial travelers' samples in all interstate traffic. At the present time commercial travelers' samples have no legal status whatever, either under federal or state laws, except in Indiana, where there is a law defining such samples as baggage. The manufacturers and wholesalers we represent need this law because when the carriers are asked, as they frequently have been, for interchangeable excess-baggage books, good on all lines within the territory covered by any one of the passenger associations, or for a reduction of the present excess-baggage rates, they decline to grant either request.

We are informed that a strict construction of the present baggage tariffs would exclude our traveling men's trunks containing samples; that in fact it is a direct violation of the interstate-commerce law, subject to all the penalties, for the carriers under present tariffs to carry commercial travelers' trunks as baggage. It would be of great inconvenience to have our traveling men's sample trunks refused by reason of this law, which the carriers could do at any time should they feel disposed. Hence the necessity for the enactment of the bill we are asking you to favorably report out of your committee to the House.

In our opinion the final solution of this question lies in a separate classification for commercial travelers' samples, with an increased allowance in the number of pounds to be carried free, over ordinary personal baggage. To procure this will require considerable time. In the meantime give us legal rights, by recognizing our samples as baggage, that will enable us to protect ourselves against loss, and that will put us in a position to demand more reasonable rates than we now have.

These rates, by the admission of the carriers themselves, are so high as to enable them to offer a discount of from 20 to 33½ per cent to purchasers of excess baggage coupon books good on one single line of railroad. This offer is not practicable, because it ties up funds invested in these books altogether out of proportion to the benefits received. But these offered discounts show the enormous margin of profit to the carriers that there is in transporting excess baggage, completely contradicting the statement made by the Central Passenger Association that the present excess baggage rates are insufficient to cover the cost of the service.

A much larger part of the trade of the country is procured by traveling salesmen than is generally supposed by the average citizen. Seventy-five to 90 per cent of the necessities of life, food, raiment, household effects, etc., are sold by manufacturers and wholesalers to retail dealers through their traveling salesmen. Almost 100 per cent of these necessities that are sold by traveling salesmen are sold from samples that they carry with them. Fifty to 75 per cent of these samples are in weight in excess of the amount they are allowed to carry free of charge. This overplus is called "excess baggage," although the carriers do not recognize it as either freight or baggage, except in Indiana, where the law recognizes these samples to be the same as personal baggage. The manufacturers and wholesalers of the country whose salesmen necessarily carry excess baggage believe that it would be no injustice to the carriers to have these samples legalized as baggage.

In order to complete our statement, we must briefly enter into details in order to illustrate why we desire that this bill should become a law. To that end, permit us to give you a few facts and figures, compiled from reports received by our association from shoe manufacturers and wholesalers located in almost every section of the country. I am speaking now for the shoe interests only.

The average shoe salesman carries about 550 pounds of samples, 400 pounds of which are excess. Fifty per cent of his traveling expenses is for hotel bills and sundry expenses combined; 30 per cent for railroad fares; and 20 per cent for excess baggage charges. In

other words, the manufacturers and wholesalers of shoes are to-day paying the carriers two-fifths as much for excess baggage as they are paying for hotel accommodations for their salesmen, and two-thirds as much for excess baggage as they are paying the railroads to transport their salesmen. In many instances the excess baggage charges are more than the railroad fares.

There are in the United States about 2,000 shoe manufacturers and wholesalers, many of these being both manufacturers and wholesalers; but the salesmen of only about 400 concerns carry excess baggage to any extent. It costs these 400 houses an average of \$7,000 each per year for excess baggage charges, the amounts running from \$48,000 to \$350. This makes a total of not less than \$2,800,000 paid by the shoe manufacturers and wholesalers each year to the railroads on this one item of expense, on which by their own admission there is profit enough to the carriers to justify them in offering, on certain conditions heretofore named, a discount of 20 to 33½ per cent on present excess baggage rates. We are seeking relief in a fair and legitimate manner from this burden.

I thank you, gentlemen.

Mr. STAFFORD. Just one minute. Will you explain more in detail the practice of railroads in issuing these baggage coupon books or mileage books for excess baggage, and state whether the railroads generally issue that character of mileage?

Mr. CAMPBELL. A good many roads issue individual mileage baggage books, good on their own line only. That would require, on the part of a large house employing a man who covers a large amount of road, an investment in eight or ten of those books.

Mr. STAFFORD. What is the charge for that character of mileage books?

Mr. CAMPBELL. They give a discount on that.

Mr. STAFFORD. Is it the same character of mileage book as is sold to the public generally for the transit of themselves?

Mr. CAMPBELL. Oh, no. This is for the excess baggage.

Mr. STAFFORD. What is the rate of charge? If you do not know, never mind.

Mr. CAMPBELL. The rate generally runs about 12½ per cent of the cost of the ticket.

Mr. DALLAM. The books are sold at \$15. That is the value of the coupons.

Mr. STAFFORD. Somebody else who is better acquainted with the matter can answer?

Mr. CAMPBELL. Yes; Mr. Dallam and Mr. Sigler are better acquainted with that question than I am.

Mr. STAFFORD. Are you acquainted with that subject?

Mr. CAMPBELL. Not so well as these other gentlemen.

Mr. STAFFORD. Have you anyone here who will speak of the question as to whether the railroads consider themselves liable for damages for loss of baggage to the extent of 150 pounds?

Mr. DALLAM. We have witnesses on that.

The CHAIRMAN. Very well. We will hear the next witness.

**STATEMENT OF MR. W. H. SIGLER, OF CLEVELAND, OHIO, REPRESENTING THE NATIONAL WHOLESALE DRY GOODS ASSOCIATION.**

The CHAIRMAN. Give your name and what you represent.

Mr. SIGLER. My name is W. H. Sigler, of the Root & McBride Company, of Cleveland, Ohio, representing the National Wholesale Dry Goods Association; also member of a committee appointed by a convention held at the Waldorf-Astoria Hotel on this subject, and composed of representatives of the National Wholesale Dry Goods Association, the National Hardware Association, the National Board of Trade, the National Boot and Shoe Association, the National Shoe and Leather Association, the United Commercial Travelers, and the Travelers' Protective Association.

The CHAIRMAN. When was that convention held?

Mr. SIGLER. On the 20th of October, 1908. That convention appointed a special committee to draft a bill regarding the carriage of excess sample baggage and to present the same to Congress. The subject has been under discussion since that time, and has been embodied in House bill 1491, introduced in the House. In accordance with the instructions given, this committee formulated and introduced, through Mr. Coudrey, the House bill 1491, introduced and referred to this committee on March 17, 1909.

This bill in section 2, lines 14 to 22, specifies:

That the samples, goods, wares, appliances, and catalogues of commercial travelers or their employers and used by them for the purpose of transacting their business and carried with them solely for that purpose, when securely packed and locked in substantial trunks or sample cases of convenient shape and weight for handling, are hereby declared to be sample baggage within the meaning of this act, and such carriers are required to transport the same with the passenger as required by this act.

That in the main and in substance is the purport of our petition.

Mr. STAFFORD. I assume that the associations which you represent and have enumerated are in favor of this bill?

Mr. SIGLER. I am here as a member of that committee and appointed by them.

Mr. STAFFORD. I assume that those associations desire the enactment of House bill 1491, and not the subsequent measure introduced by Mr. Coudrey, No. 16019?

Mr. SIGLER. The two do not conflict.

Mr. STAFFORD. Which one is the association advocating?

Mr. SIGLER. The associations I have named authorized the committee to formulate this bill, and it was submitted to the different associations and received their approval. The resolution upon which it was given to the committee was unanimous.

Mr. STAFFORD. Has the committee considered the later draft which is somewhat different, as embodied in House bill 16019?

Mr. SIGLER. They have considered it to this extent, that it is a specific rate-making measure, which would hardly, in our estimation, be considered by Congress. It is a definite rate-making measure.

Mr. STAFFORD. So that the committee of the associations you represent are concentrating their efforts on House bill 1491?

Mr. SIGLER. Yes, sir.

The subject of sample excess baggage presents one of the most striking anomalies in the transportation system of the country.

This traffic involves the payment of hundreds of thousands of dollars every year by the merchants and manufacturers and commercial men of the country, and the receipt of that sum by the railroads is an illegal traffic. The railroads of the country have no right, in our opinion, to accept and transport merchandise samples as personal baggage, and the merchants, manufacturers, and commercial men have no right to offer this sample baggage under the implied but false assumption that it is personal baggage, and the judiciary of thirty States, I may say on the authority of the attorney-general of Indiana, have decided that this is correct, that merchants' samples are not personal baggage.

Mr. STAFFORD. What do you mean by saying the judiciary of thirty States, on the authority of the attorney-general of Indiana, have decreed that it is not personal baggage?

Mr. SIGLER. No; he has not decreed it, but I say that on his authority. I do not know personally that that is the fact, but on his authority as taken from Mr. Gettys, the chairman of our committee on excess baggage. That is his statement.

Mr. STAFFORD. I suppose you mean that the supreme courts of those States have decided that it is not regarded as personal baggage, regardless of the opinion of the attorney-general of Indiana?

Mr. SIGLER. Oh, yes. He did not authorize it in any way. I simply gave him to you as the authority. My own authority would not carry very far in a legal matter.

Until this question as to the legal standing of the interstate traffic in excess sample baggage is settled by act of Congress, no progress can be made in the adjustment of the matter between the railroads and the merchants, the commercial traveling man, and the States.

Mr. KENNEDY. Do the railroads object to carrying more than 150 pounds of baggage?

Mr. SIGLER. No, sir. We carry in some cases 2,500 pounds, worth at times \$2,000.

Mr. KENNEDY. There is nothing in the law that prevents the railroad from carrying your baggage to any extent, is there?

Mr. SIGLER. No, sir; but we are carrying it under a false assumption. They openly say to us, "We do not know that they are samples that you present to us. They are covered and in a trunk, and are presented as any other tourist's baggage."

Mr. KENNEDY. They charge you as much for that, do they, as any other sort?

Mr. SIGLER. Just the same.

Mr. KENNEDY. You do not expect to have it carried any cheaper?

Mr. SIGLER. No, sir; we are not after that at all.

The CHAIRMAN. Do you want to have the railroad companies made liable in case of damage or destruction of your baggage?

Mr. SIGLER. No.

Mr. KENNEDY. They are liable now?

The CHAIRMAN. No.

Mr. SIGLER. As a matter of practice, they will pay for any samples that are lost.

The CHAIRMAN. As I understand it, they do not admit liability except on personal baggage.

Mr. SIGLER. No, sir. On sample baggage they do not admit that liability. We are simply in their hands.

Mr. STAFFORD. Do they admit liability up to the extent of 150 pounds?

Mr. SIGLER. As personal baggage?

Mr. STAFFORD. Do they admit liability when you attempt to recover damage for loss, whether they regard it as personal baggage or commercial travelers' samples?

Mr. SIGLER. They would not admit any liability as commercial travelers' samples.

Mr. STAFFORD. Suppose a loss occurs. There must be numerous instances of travelers' baggage consisting of samples not in excess of 150 pounds. Do the railroads make any allowance to the concerns for that loss?

Mr. SIGLER. Yes; but they will tell you at the same time that they do this only as a matter of friendship to you. It is really a matter of policy, merely, with them.

Mr. STAFFORD. They do not refuse to reimburse you to the actual loss up to that extent?

Mr. SIGLER. I have not known of an instance.

Mr. STAFFORD. Do you know of instances where they have refused to reimburse you for the loss on excess baggage over 150 pounds?

Mr. SIGLER. No, sir; we have no quarrel with the railroads in this matter.

Mr. RICHARDSON. What do you want, then? What is the matter, then?

Mr. SIGLER. We want this traffic legalized.

Mr. RICHARDSON. Is it not a fact now that when a man buys a ticket to go to any place he has the right to carry 150 pounds of baggage without paying any excess? Do you want to be allowed to carry baggage over 150 pounds?

Mr. SIGLER. Yes; but we expect to pay for it, though.

Mr. RICHARDSON. You want to legalize what?

Mr. SIGLER. To legalize the traffic. You will understand within the limits of the State the State is supreme, of course, and in the State of Indiana—

Mr. RICHARDSON. Not in interstate commerce. In interstate commerce the State is not supreme.

Mr. SIGLER. In the limits of the State of Indiana the State is supreme, and she has passed a baggage law and a mileage law, and they are working well, and there is no complaint, I believe, and no suits have been brought against the railroads in the matter.

Mr. RICHARDSON. What kind of a law is that in Indiana? I do not know anything about it. Is that the kind of law you want here now?

Mr. SIGLER. No, sir; you could not pass it here. I should judge you could not.

Mr. RICHARDSON. If it is interstate commerce, you could.

Mr. SIGLER. No, sir; the Interstate Commerce Commission has replied to the baggage association—I have their exact words here—to this effect: "The commission will not have power by general order to reduce rates on excess baggage for all carriers throughout the United States. It has jurisdiction of complaints of unreasonable rates charged by particular carriers."

That is their position. Now, if we want this law legalizing the traffic, then we will not meet the misfortune that would happen if we

rely wholly upon state laws. When you are within the limits of the State you are all right, but when you get there and cross the line you come into interstate commerce.

Mr. RICHARDSON. The traffic is legal in and out of the State now?

Mr. SIGLER. No, sir.

Mr. RICHARDSON. Then you are engaged in traffic that is violating the law?

Mr. SIGLER. Yes, sir.

Mr. RICHARDSON. How are you violating the law?

Mr. SIGLER. Because we are asking the railroads to check samples and merchandise as personal baggage. They close their eyes and say: "We will do this, as we understand that it is personal baggage."

Mr. RICHARDSON. What do you mean by other kinds of baggage?

Mr. SIGLER. Samples and specimens of goods as distinguished from personal baggage.

Mr. KENNEDY. Where do you get this idea that this conflicts with any law in doing that?

Mr. SIGLER. From the railroads themselves.

Mr. KENNEDY. I understand that. Let me tell you a little incident that came to me, coming from Columbus, last winter, to Washington. I was told by the ticket agent of the Pennsylvania Company, who was also the Pullman car man, that he could not sell me a berth from Columbus to Washington on a ticket over the Pennsylvania lines to Pittsburg and mileage from Pittsburg here. I asked him why. "It would conflict with the law made down at Washington," he answered. Now, that, in my judgment, was simply an effort of the railroad to make sentiment against railroad-rate legislation. There existed no law that prevented them from doing that, yet they instructed their ticket agents to tell the traveling public that there was a law against it. Did not the railroads carry this excess baggage before the passage of the rate bill?

Mr. SIGLER. Interstate?

Mr. KENNEDY. Yes.

Mr. SIGLER. Yes, sir; and carried it for less than they do now.

Mr. KENNEDY. Do you think there is anything in the rate bill that prevents them from doing it now?

Mr. SIGLER. Yes, they are discriminating.

Mr. KENNEDY. Do they tell you where it is?

Mr. SIGLER. No; they do not tell us any more than this: They reject altogether the idea of responsibility for checking trunks of samples as samples. That is the idea of this legislation and of these decisions that I have spoken of.

Mr. RICHARDSON. It goes all right until you sue for it?

Mr. SIGLER. Yes, sir; that is a bad situation, as you will realize.

Mr. RICHARDSON. The carriers make no discrimination in the charges for baggage for anybody, and you make no complaint on that; and everything is happy and bright with the railroad except this one complaint?

Mr. SIGLER. Except this one thing.

The CHAIRMAN. Let me see if I can straighten this thing out. You say this is now contrary to law. Of course you can not point to anything in the law on the subject. The railroads now carry your excess baggage and your sample baggage as personal baggage, having made



no regulations for the carrying of any baggage except personal baggage. Is there anything in the law that would forbid the railroad company carrying any samples as baggage for anyone?

Mr. SIGLER. In the interstate commerce law?

The CHAIRMAN. In any law.

Mr. SIGLER. I have their authority that there is.

Until this question is settled by act of Congress, no progress can be made in the adjustment of the matter between the railroads and the merchants and between the commercial traveling man and the States.

We do not come here, gentlemen, with any desire to harass the railroads nor to cut down their profits to a vanishing point on this traffic. In point of fact, before the interstate era of national control began on our railroads, many of the railroads were doing 20 or 25 or 33 per cent better on excess rates than now. That is true of the railroads embraced within the Central Traffic Association, running from central Ohio to the Missouri River and north of Ohio. The roads were then issuing excess-baggage books to the mercantile traveling public with the discounts I have named. These discounts were recalled by the roads, not because of the discrimination, but for want of patronage, which was due to the fact of their books being noninterchangeable, making it necessary to supplement one purchase by many others.

Mr. STAFFORD. Have they been withdrawn entirely?

Mr. SIGLER. Yes; by the Central Passengers' Association.

Mr. STAFFORD. How generally were they in use before?

Mr. SIGLER. Not very largely. They withdrew them.

Mr. RICHARDSON. Because they did not have patronage?

Mr. SIGLER. Yes.

Mr. STAFFORD. What reason was there for the rebate of 20 and 25 and 33 per cent?

Mr. SIGLER. It was on the ground that the traveling man is a freight maker. Every bill he makes is a freight bill.

Mr. STAFFORD. Was there any discrimination in these rebates where the rebates were given?

Mr. SIGLER. No; they would be given to you the same if you were an ordinary tourist or if you were a commercial traveler.

Mr. STAFFORD. To whom was the full rate charged?

Mr. SIGLER. To the man who did not know, or did not want to buy the ticket.

Mr. STAFFORD. What I want to know is whether a different rate was charged to the public from that charged to the commercial houses?

Mr. SIGLER. No, sir; the books were always open before the passage of the interstate-commerce law. There was no effort to get them to the public or to give the public any notice of their existence; but after that there was.

Mr. STAFFORD. Was there any limit of time on the life of those books as upon passenger mileage books generally?

Mr. SIGLER. There was a liberal allowance on that. I do not know what it was.

Mr. STAFFORD. This has given place to the interchangeable ones?

Mr. SIGLER. Yes.

Mr. RICHARDSON. You are calling attention now to another matter where you want uniformity?

Mr. SIGLER. Yes; we want this 'clause enacted legalizing the traffic after that.

Mr. STAFFORD. Leaving out the rebate, the furnishing of these books was only a convenience to the commercial houses?

Mr. SIGLER. Principally, yes; because no others used that amount.

Mr. STAFFORD. And you are in the same situation to-day, except so far as the baggage is accepted, although you have not this convenience of scrip or discount?

Mr. SIGLER. Yes, sir; that is the situation. Our objects in asking for the passage of this bill are uniformity and reasonable charge and interchangeability. Proper classification and correct legal status of the excess sample-baggage traffic are the remaining two points. The one overruling point is the question of legal status. When asked for concessions based upon the volume and freight-making power of the samples carried, the railroads have invariably replied that they could not discriminate between the commercial men's and tourists' traffic without making themselves liable under the interstate-commerce law.

They further called attention to the fact that their only alternative was to concede it on the whole traffic and lose in receipts from the 60 per cent tourist traffic—an uncalled-for reduction—for the sake of obliging the 40 per cent of commercial traffic; for in spite of the prevalent impression this is practically the ratio between the two classes of trade, 60 per cent of tourist and 40 per cent of commercial. If they concede it to merchants and those who carry large amounts of baggage, they would have to concede it on the 60 per cent of tourist traffic—people who were simply running from one point to another once a year or less, or perhaps more, over a certain line.

Mr. RICHARDSON. Now, are they engaged in the practice? For instance, do they make any difference in the charge for a hundred pounds of baggage owned by a tourist and one hundred pounds of baggage owned by a commercial drummer?

Mr. SIGLER. No, sir.

Mr. RICHARDSON. They do not make any difference in their charges at all under the Hepburn rate bill?

Mr. SIGLER. You seem to be seeking for my point in this matter. It is this: That with this traffic legalized, then we can make an adjustment in the States between the railroads and the mercantile people which will not conflict when we get outside of the state lines with interstate commerce.

Mr. RICHARDSON. The idea I had in mind with respect to your statement is that as to that proposition—the hypothetical suggestion I made to you regarding the baggage of the tourist and the baggage of the commercial man—the charges for the same are absolutely settled by the law now. If the railroad goes and charges a tourist on his baggage more than it does a commercial man, it is making a discrimination for which the common carrier is liable to punishment?

Mr. SIGLER. Yes; that is true. But except in the State of Indiana, which is the only State which specifies what the rate shall be, it is a matter of initial action in that case from the railroad.

Mr. STAFFORD. Do you make any claim, by reason of the different character of the excess baggage used by the commercial travelers from that of excess baggage used by the traveling public generally as personal baggage, that there is less responsibility entailed upon

the carriers in the carriage of the drummer's samples than in the carriage of the personal effects of the ordinary passenger, where the carrier is liable as an insurer to the extent of the personal effects that are needed on that voyage or journey?

Mr. SIGLER. There is no difference in that case except in the minds of the railroads. You would not care to do business on a basis where the other party in the transaction can at any time fly the track and say to you: "We will not discuss this matter; we are not responsible. We will let it go." The only thing that prevents the railroads from doing that now is this question of policy. They know that if they did that, they would incur the disapproval and hostile action of the merchants all over the country. They would rather do it as a matter of policy.

In England merchandise sample traffic is in a class by itself. That is just what we are trying for in this case. I have a copy of an English tariff here which puts ordinary passengers' luggage in Class A and commercial travelers' luggage in Class B. This is a copy of a baggage tariff sent from England. It takes in Class A ordinary passengers' luggage and gives the charges, one-quarter, one-half, three-quarters of a pound or more, and commercial travelers' luggage just half those rates. That is, the rates on Class B are just one-half those on Class A.

Mr. STAFFORD. There must be some reason for that classification and for the minimum charge for the commercial traveler's baggage under the rates for personal traveler's baggage.

Mr. SIGLER. Yes, and there is; and we find it in the fine sense of fair play that rules among the English people.

Mr. STAFFORD. I was trying in the first place to ascertain whether there was anything in the way of a difference in this country in the nature of baggage carried as personal effects, carried by the public generally, and the samples carried by the commercial travelers; whether there is any difference in the character of the baggage, and you replied that there was not.

Mr. SIGLER. I must have misunderstood your question, because I have stated that the sample baggage is a freight maker. It makes freight, and everybody should so understand, whether on the directory of a railroad, or in cars, or anywhere else.

Mr. STAFFORD. Is there not this difference, also—I am speaking for information—that per hundred pounds commercial baggage is in value less than a hundred pounds of personal-effects baggage?

Mr. SIGLER. That would be very hard to answer. I was told of a piece of sample baggage not long ago that was worth \$2,000. That was the actual value, and every part of it could be taken out of the trunks and sold. Now, in the case of samples cut in pieces and put on a roll, merchant's samples, that may have only a temporary value, but its principal value is its value to us as salesmen, using it for the time being. Then at other times samples are sent out in a large piece, and that, of course, has a direct intrinsic value.

Mr. KENNEDY. The cost of hauling this baggage is not, perhaps, so great per pound as the hauling of the ordinary travelers' baggage, because the commercial travelers' sample baggage usually goes in a solid block of big trunks, which can be loaded and unloaded at one point, and the expense of handling that, to the railroad, would be

much less than a like number of pounds of small packages, would it not?

Mr. SIGLER. I have not so considered it.. But there are more returns to the railroad from the commercial traveler.

The CHAIRMAN. I suggest that we are getting rather limited for time.

Mr. SIGLER. Very well, sir.

The CHAIRMAN. I am not speaking to the witness.

Mr. SIGLER. Here we have the legal principle of a division of the traffic into separate classes and the application of a higher rate for ordinary travel, discriminating in favor of commercial traffic, in long-standing use, and yet the sturdy English sense of justice and fair play makes no protest. If you have a specific rate covering all the United States railroads, near and far, prosperous and bankrupt, under one uniform charge, you are violating a provision of the interstate-commerce law, that you can not compel any railroad to handle traffic at a loss.

In 1887 the Interstate Commerce Commission was established. For ten years it heard and determined cases of complaint by shippers or railroads. It made rates, adjusted differences, and did good work. In 1897 the decision of the Supreme Court, in the case of the New Orleans, Texas and Pacific Railroad v. the Interstate Commerce Commission, took away that power. It took ten years of most intense endeavor and agitation by over 500 trade organizations, chambers of commerce, and individual shippers to get back to the Interstate Commerce Commission this rate-making power. What chance is there that Congress by direct action against precedent will step in and establish specific commercial rates? The commission has replied just what I have read to you. It is very evident to a student of this subject that there is good ground for complaint of the rates charged as well as for the removal of legal discrimination that touches the traffic. I will ask that you allow me to read a part of an address from one of our associations before the Travellers' Protective Association at Milwaukee, as to some matters of traffic that we could control if we had a legal standing in the courts. [Reads:]

AN ARGUMENT BEFORE THE TRAVELERS' PROTECTIVE ASSOCIATION OF AMERICA AT THEIR CONVENTION, MILWAUKEE, JUNE 24, 1908, AS REPRESENTATIVE OF NATIONAL WHOLESALE DRY GOODS ASSOCIATION.

GENTLEMEN: Somewhere back in the classics there is an aphorism which runs: "The gods grant their favor to him who can define." Of later date, and from a clerical source, we have the epigram: "Next to the grace of God comes the ability to distinguish between things that differ." After a careful canvass of opinion among commercial traveling men, employing merchants, railroad officials, and statisticians, I am prepared to believe that it requires a bountiful endowment of both qualifications to make appreciable progress in the question of excess sample baggage transportation. The power of a wrong definition to sidetrack the most carefully formed conclusions and to finally derail a whole subject among the bogs of prejudice and misinterpretation has been well exemplified in the campaign to correct the evils attending the transportation of sample baggage.

The question has been treated by the railroads of the country in the wrong way. Not illiberally at all times; not with malice aforethought at any time; but upon inaccurately defined bases, resulting in alternate periods of injustice to both sides.

The first error in defining the railroad status of the "goods, wares, and appliances used by traveling men as samples" was in classing them as personal baggage. Self-evidently they are not personal baggage and the judiciary of 30 States have so declared.

Next in line of misinterpretation of our subject comes the attitude on the part of the railroads of a temporary toleration, of a desire to keep excess sample baggage within closely circumscribed limits—eventually to reduce it to an impractical minimum or turn it over entirely to the express companies.

At a hearing before the Central Passenger Association on this subject, attended with very few exceptions by the general passenger agents of the whole Central Passenger Association territory, and in a written report presented by a committee of the general passenger agents, replying to arguments presented by the cities of Buffalo, Chicago, Cincinnati, Cleveland, Columbus, Detroit, Pittsburg, and Toledo, the following official presentations were made:

First. The present basis of excess baggage is insufficient to cover the cost of the service.

Second. The legitimate obligation of the transportation line to its patron is fulfilled by the carriage of personal baggage and wearing apparel, and stocks of merchandise should be barred.

Third. That present excess arrangements already encroach upon the rights of the express companies, and that further liberties will not be tolerated. I am quite sure the report said "tolerated."

Fourth. The baggage allowances and privileges of this country are already superior to those of other countries, and further grants to traveling men will impair the passenger service.

Here you have the whole official point of view presented in written form over the signature of a committee of its general officers. In condensed paraphrase the replies are:

First. It doesn't pay.

Second. It is not our business.

Third. The traffic belongs to the express companies.

Fourth. We do better here than is done abroad.

There should be no hesitation in conceding to our railroads superiority in the mechanical transportation and handling of baggage on trains. Their methods are up to date, convenient, and prompt, and should be commended. But so long as official action upon excess baggage matters is in its general trend based upon the arguments here presented there will be maladjustment in the results and discontent on the part of the merchants and traveling men of the country.

The statistics for all railroads in the United States up to January 1, 1907, have been tabulated and are now available. For the year 1906 the average per passenger per mile was 2.01 cents; for the twelve years preceding this, there was an average of 2.03 cents. For 1906 the average receipts per passenger train mile were 106.4 cents, as against a grand average of 88.7 cents for the twelve years previous.

The average receipts per mile of railroad for 1906 were \$2,379, against a grand average of \$1,761 for the twelve years previous.

The gross revenue received in 1906 for passenger traffic was \$519,826,434, against a grand average of \$340,385,517 for the twelve years previous.

The miles operated in 1906 were 218,476 miles against an average operation of 191,226 miles for the twelve years previous.

The percentage of operating expense to combined earnings, passenger and freight, for the year 1906 was 66.33 per cent, against a grand average for twelve years previous of 68.79 per cent.

Certainly this is not a bad showing for the first year of effective 2-cent-a-mile operation and explains the complacent attitude of the railroads upon this subject. There would seem to be but little justification for \$100,000,000 advances in freight rates as proposed, or for any addition to charges for excess sample baggage transportation.

Another misinterpretation in the treatment of excess sample baggage has been the contention that tourist and commercial traveler must be treated exactly alike in weight and schedule charges to save the appearance of illegal discrimination.

Discrimination is not always an evil. A proper discrimination in many cases is true justice. In equity the tourist and the traveling man are not on the same basis, and if there is anything in the official railroad regulation or legal status which considers them inevitably so, it should be changed at once. This is a vital point and any reform of the present system should start here.

It will be remembered that the fourth presentment of the general passenger agents' committee recites that the baggage arrangements and privileges in other countries are superior to ours and claims immunity from further grants for this reason.

I have at hand a circular sent to Mr. F. T. Day, acting chairman of the excess baggage committee of the National Wholesale Dry Goods Association, by Consul-General Griffiths, of Liverpool, which does a very simple, yet a very radical and most effective thing in excess sample baggage transportation. It classifies excess baggage in a separate class with a separate schedule and allowances peculiar to the traffic.

Excess sample baggage is as reasonable a subject for classification as fares or freight. The application of such a classification does away at once with all charge or chance of illegal discrimination. The English schedule places "ordinary passengers' luggage" in Class A; "commercial travelers' luggage" in Class B; ordinary passengers are allowed 150 pounds on a first-class ticket; commercial travelers, Class B, are allowed 300 pounds on a first-class ticket. Commercial travelers are allowed to check through the day's run, or for a return journey to their starting point at the lowest rate for the total distance traveled, if prepaid.

The rates are graded according to the total miles run, and the commercial travelers' rate is half that of the ordinary traveler's rate.

In other words, the traffic is treated entirely in a class by itself, and the sturdy English sense of justice and fair play prompts no complaint.

The essential feature of the English system to be recommended above our own is the separate classification. With this established, sample excess baggage ceases to be an illegal exaction upon the transportation companies and takes its place in orderly relation to other traffic, both state and interstate.

The responsibility for loss or damage in transit follows in necessary and proper sequence. Under such a system of classification the railroads are left free to make, if they so desire, a different rate on excess sample baggage, and the aim of the old excess baggage book is thus attained without its complication of accounts and necessary auditing.

The issuance of these excess sample baggage books giving discounts of 20, 25, and 33½ per cent to the traveling public, was an admission of a margin of profit hitherto unknown and supposed to be impossible in the domain of excess baggage. This margin of profit was in no way denied even by implication in the withdrawal of the books. Want of patronage was the only reason alleged, and that was caused by the fact that the books were not interchangeable and each one must be supplemented by many additional similar books on different lines.

Another consideration favoring separate classification is found in the very just claim made by a railroad official in the Central Passenger Association hereinbefore mentioned, to the effect that any concession favoring the commercial traveler on excess sample baggage, must necessarily under present regulations, be extended to the ordinary passenger baggage and an uncalled-for loss of revenues would ensue.

Accurate statistics as to the relative proportion of ordinary passengers' excess baggage and commercial travelers' excess baggage are impossible to obtain, but careful inquiry among railroad men competent to speak from experience upon the subject, places the relative percentages at 60 per cent and 40 per cent. It would take 700,000 traveling men traveling 15,000 miles a year to make 40 per cent of the total passenger movement of 1906, which was 25,842,462,029 passengers carried 1 mile.

This classification of excess sample baggage to be effective must be uniform over all States and that can not be obtained by individual state laws. Two States side by side, having identical 2-cent fare laws, are not secured from 3-cent mileage charges on interstate business. Uniformity can be obtained by conference and agreement with the railroad companies and they seem, so far as uniform rate is concerned, to be ready to concede the point. At the Buffalo rate meeting of May 22 last, it was publicly announced that there was to be a uniform 16½ per cent of first-class fare rate to be placed on excess baggage all over the United States, Canada, and Mexico. The Pennsylvania road, it is said, has already issued their printed schedule on this basis. The per cent amounts to one-sixth of the first-class fare. It is not stated whether the old limitations of minimum rate and minimum total charge are to be continued, but if they are, immediate protest should be made.

Another possible method of obtaining uniformity of rate would be by a tentative ruling of the Interstate Commerce Commission, based upon representations as to the injustice, unreasonableness, and restrictive tendency of the present widely conflicting schedules in different parts of the country for the same service in transporting excess sample baggage.

The Interstate Commerce Commission, in a letter to the national wholesale dry goods committee on excess baggage, said: "The commission will not have power by general order to reduce rates on excess baggage for all carriers throughout the United States. It has jurisdiction of complaints of unreasonable rates charged by particular carriers."

The old schedules on excess baggage were popularly supposed to be based upon a percentage of 12½ per cent—¼ of the first-class 3-cent fare, but one before me, issued by the Wabash road, figures 12½ per cent only in detached places. Among the shorter runs the ¼—12½ per cent rate—is not reached until a fare of \$2—67 miles on a 3-cent basis—is paid. Evidently there was no intention to share the benefits of the ¼ per cent with the grand average of the patrons on Central Passenger Association territory, who

averaged only 39.69 miles per passenger run in 1906, and from that down to 29.59 miles per passenger run in 1895.

A Boston and Maine schedule figures 20 to 25 per cent up to 70 miles on a 3-cent basis, and  $\frac{1}{4}$ —12 $\frac{1}{2}$  per cent—on the longer mileages, an evident cold shoulder to the grand average of individual travel in New England territory which was 17.45 miles per passenger run in 1906.

These discriminations, for they are surely such, are corrected in some of the later schedules. Tariff 16, St. Louis and San Francisco Railroad, commences its present-age division squarely at 1-cent fare paid, but specifies that the schedule shall be used between points both lying in the State of Missouri. A Boston and Albany excess sample baggage schedule marked in effect after July 1, 1908, charges its passengers who ride 19 miles at 2 cents, 38 cents fare paid, an excess rate of 15 cents per 100, or 39 per cent, while passengers who ride 210 miles at 2 cents, \$4.20, pay 70 cents, or 16 $\frac{1}{2}$  per cent of the first-class fare. As the average run of miles per passenger on this territory is 17.45 miles, the moral is again evident.

In other words the grand average of travel which is shown by the average distance traveled per passenger—

In the New England States 17.45 miles.

In the Middle States 23.30 miles.

In the Central Northern States 39.69 miles.

does not participate in the basic percentages of 12 $\frac{1}{2}$  per cent of the 3-cent fare and 18 per cent of the 2-cent fare supposed to rule in the make-up of the excess baggage tariffs, for the reason that the percentage does not commence to work until after these average mileages have been run, the action of the percentage having been forestalled by average minimum rate and total charge requirements.

A minimum total charge requirement for handling a given amount of baggage is perfectly fair, very clear, and easily adjusted. A minimum average rate requirement is a complication of accounts and an addition to expense which can easily be provided for under the minimum total charge head.

The makers of the 16 $\frac{1}{2}$  per cent rate at Buffalo seem to have proceeded upon the assumption that 2-cent fare will eventually be established as the universal rate. At present only six or seven States have passed such laws. If, for any reason, the present proportion should remain constant, the 16 $\frac{1}{2}$  per cent rate will mean a large average advance over the country.

16 $\frac{1}{2}$  per cent—new rate—of 50 miles at 3 cents—\$1.50 is 25 cents, or 6.25 cents more than

12 $\frac{1}{2}$  per cent—old rate of 50 miles at 3 cents—18 $\frac{1}{2}$  cents.  
showing an advance of 33 per cent for the new rate on all territories where 3-cent fare holds out, and the new baggage rate is put in.

Again

16 $\frac{1}{2}$  per cent—new rate of 50 miles at 2 cents—\$1, is 16.67 cents

2.08 cents less than

12 $\frac{1}{2}$  per cent—old rate of 50 miles at 3 cents—\$1.50, 18.75 cents.  
showing a reduction of 11.09 per cent on the territories where 2-cent fare has been established and the new baggage rate has been put in.

There is no reason for an advance in excess rates at this time except that the transportation companies should be allowed to recoup themselves for reductions in passenger revenue by subsequent additions to the rate on excess baggage. If the 2-cent passenger laws are sound in law and justice, this should not be permitted.

The economic conditions of 1908 are extraordinary, extraneous, temporary, and have come to all alike. It is illogical and selfish for any one interest to endeavor to shift its burdens to the shoulders of another. The times are ripe for a settlement of the existing tangle of differences on this excess baggage question, but it needs united action on the part of all interested in the traffic. The National Wholesale Dry Goods Association has appointed a committee of five members, Mr. Robert Geddes, of Indianapolis, chairman, who, under the sanction of the association, are proceeding along the lines of forming desirable alliances with all interested in the traffic, so that concentrated effort upon some mutually satisfactory plan can be followed.

As far as the committee has learned other associated lines of trade have postponed the consideration of this matter in order to cooperate with the action decided upon by the united committee and thus give the combined representation a stronger emphasis.

The movement needs the dash, the enthusiasm, the practical legislative knowledge, the determination to win, the general all-around ability of the members of the Travelers' Protective Association. The exact course of action to be followed will be a matter of mutual conference. The objects to be attained are—

Uniformity and reasonableness of rate.

Interchangeable quality to be assured by complete uniformity.

Proper classification of excess sample baggage.

Correct legal status of the traffic.

These objects, when attained, will be worth hundreds of thousands of dollars to the commercial traveling interests of the different sections of the country.

We must be fair, we must be intelligent, we must be logical, we must be conciliatory in our demands; otherwise, our results will not appeal to intelligent men. We should aim to settle the excess sample problem on broad lines now and once for all, and not allow ourselves to be turned aside by any temporary, or purely local, concession. There should be no begging demands, no pleas that certain things should be done because the railroads "have to run their trains anyway." The railroads are trustees of a value belonging to the whole body of stockholders and patrons, and the best interests of all are subserved by a policy which makes every turn of a wheel bear its legitimate expense, collected without rebate or discrimination from the interest to which it should be justly charged. The lowest average of expense to all comes from a cheerful assumption by each one of his own individual share. State action is only partially effective. The present status of excess sample baggage before the law and from the standpoint of the railroad company is thoroughly unsatisfactory to the merchant of the country. It is too important an interest to be left as a matter of chance favor or disfavor, local justice or injustice.

Its true basis should be determined, its service graded and its treatment confided to a stable, uniform policy all over the United States.

The cap has been made to fit down nicely on the great majority of the traffic.

This matter of the misapplication of rates is only referred to in order to show that there are other conditions attached to the traffic which go to make heavier the burdens upon the commercial traveling public which should enlist your aid in their behalf.

There is but one conclusive way to treat this subject, and that is for Congress to establish the general principle by the passage of House bill 1491, and leave the detailed adjustment of rates and other conditions to the cooperative consideration of the merchants, manufacturers, commercial men, and the railroads. We therefore petition you that House bill 1491 be placed upon its passage and be advanced to a vote at the earliest possible moment, and thus pave the way to other needed adjustments in this valuable and constantly increasing traffic.

**STATEMENT OF MR. MARTIN CONBOY, OF THE FIRM OF GRIGGS, BALDWIN & BALDWIN, NEW YORK, ATTORNEYS FOR THE NATIONAL WHOLESALE DRY GOODS ASSOCIATION.**

The CHAIRMAN. Please give your name and state what you represent.

Mr. CONBOY. My name is Martin Conboy. I am a member of the law firm of Griggs, Baldwin & Baldwin, of New York City, attorneys for the National Wholesale Dry Goods Association.

Mr. Chairman and gentlemen, I am not going to take up very much of the time of the committee, and what I am going to say, gentlemen, is to be devoted entirely to the statement of the character of this legislation that we are seeking to have the Congress of the United States enact into a law and the necessity for it. All that we are asking by this House bill 1491 is this, that Congress shall determine, in connection with the carriage of commercial travelers' samples by railroads engaged in interstate commerce, while they are so engaged, that such samples and catalogues and the other articles that the commercial traveler takes around with him when he is making sales shall be classed as baggage.



Now, although in Mr. Sigler's experience he has never come across a case where the courts have determined that travelers' samples are not baggage, yet the courts in this country, following the precedent of England, have limited the definition of baggage to personal effects of a traveler, and in many instances where traveling salesmen's samples have been lost the railroads have defended against a recovery on the theory that they were not baggage and should have been shipped as freight. In our own State of New York in one instance where a trunk of sample shoes was lost on the line of the New York Central Railroad and the New York Central Railroad had issued what was called an "excess baggage check," the New York Central Railroad defended against an action for recovery for the loss of that trunk of shoes on the ground that it was not baggage and should have been shipped as freight, and that even if it was regarded as baggage, the employer of the traveling salesman, not a party to the suit, was the owner of the baggage, and therefore the person who tendered the trunk had no right to recover. That was the contention of the railroad company in that action.

Mr. RICHARDSON. Your contention is to have all this included under one term of "baggage?"

Mr. CONBOY. Yes, sir; "personal and sample baggage." Now, where do we get that term of "sample baggage," gentlemen? In this very case that I have referred to, that went to the court of appeals in the State of New York, the New York Central Railroad had adopted a regulation which contained this provision:

All cases or trunks containing merchandise will be carried as an accommodation to commercial travelers when release of liability is signed in consideration of its transportation on passenger trains as baggage.

You had to sign a release on that baggage. In case personal baggage and samples are sent in the same trunk, a release must be signed covering the samples.

Now, you see, the railroad companies there make a classification between what they call "personal baggage" and what they call "sample baggage," and we are asking Congress to make that classification legal. If the classification can be made as a matter of regulation by the railroad company itself, we say that the classification is not a matter of discrimination, and that this Congress can exercise, in passing a law upon that subject, the right of saying, "Why should the railroad find it more difficult to carry 150 pounds of sample baggage along with a commercial traveler than it does 150 pounds of personal effects along with a tourist?"

Mr. STAFFORD. How general is the practice on the part of the railroads to compel commercial travelers to sign a release?

Mr. CONBOY. I could not tell you. But in that case before the court of appeals that regulation is spread out with authority.

Mr. BARTLETT. Did the man fail to recover for the damage?

Mr. CONBOY. Oh, no; the court held that he had a right to recover under this independent contract which the railroad company signed and for which they charged a consideration.

Mr. BARTLETT. If you have got no case where the courts, either state or federal, have failed to permit the traveling salesman to recover for a loss or damage even under that sort of contract, what is troubling you?

Mr. CONBOY. The trouble is this: Unless there is a contract of some character which the railroad company has set down in writing, personal effects are the only kind of baggage recognized by the law, and the railroad company at any time may—

Mr. KENNEDY. Are you right about that?

Mr. CONBOY. I am right, so far as the definition is concerned.

Mr. KENNEDY. Whose definition?

Mr. CONBOY. The definition of any court that decided the point.

Mr. KENNEDY. Is there any case where the carrier has refused to carry anything where they have supported that position, except in the case of dogs and cats and things of that kind that they can not be compelled to carry?

Mr. CONBOY. I do not think you can mandamus a railroad in a case like that.

Mr. RICHARDSON. Would not the answer of the railroad be in a case of mandamus like that, "These people should send that by freight; they are trying to get me to send it in a different way?"

Mr. CONBOY. I will answer your question. The books are full of cases where the railroads have defended against the shipment of travelers' samples on the ground that they were not baggage, and that they were shipped as baggage by artifice. Here is the railroad ticket which I came down here from New York on which says, "The company's liability for baggage checked hereon is limited to wearing apparel not exceeding \$100 in value, except by special contract."

Mr. KENNEDY. Your State has distinctly held in every decision made by the supreme court that that limitation on that paper is of no use.

Mr. CONBOY. No, sir. I have not made myself clear on that point. In this particular case that I am speaking of, the baggage master who received this trunk had issued a special independent agreement for the reception of it. It was not carried as baggage along with the passenger, but as excess, for which a special independent contract had been made.

Mr. KENNEDY. The carrier can not on its ticket limit the kind of baggage it will carry. Your courts have held on that.

Mr. CONBOY. No, sir. Our courts have held that the only kind of baggage that can be carried is personal effects, and if you should try to carry anything else you are practicing a deception on the railroad company, and when the baggage is lost you can not recover.

Mr. BARTLETT. Have they held as to the limit or amount?

Mr. CONBOY. Yes. A special contract either for the transportation of a passenger or of freight is lawful, and the difficulty we have before us at the present time is that when you come to ship a traveler's trunk, unless you ship it by freight there is no certainty that the railroad company will give you anything if it is lost.

The CHAIRMAN. What is it that you want to get?

Mr. CONBOY. We want to get a legalization of travelers' sample baggage and require railroad companies while engaged in interstate commerce to carry 150 pounds of travelers' samples along with the traveler, just as they carry 150 pounds of personal effects along with the tourist as his baggage, and that where there is an excess in the amount of baggage the car shall be required to carry the excess when they have a baggage car, as they would be compelled to carry the excess when it is personal effects. We do not want anything more than that.

Mr. RICHARDSON. Is not that in effect trying to force a carrier to take a box of shoes or merchandise that ought to go as freight and put it on the level with a man's personal baggage?

Mr. CONBOY. It is an attempt to compel the common carrier to carry the samples, no matter whether they are shoes or any other kind of merchandise, that the traveling salesman is carrying with him along to his destination.

Mr. RICHARDSON. What is the difference in the charge made by the railroad if it were required to carry that commercial baggage in the same way as the personal baggage? What would be the difference in the charge by the railroad if that commercial baggage went by freight?

Mr. CONBOY. We have attempted to cover that point by saying this in the law:

That in case of loss or damage to such samples, goods, wares, appliances, or catalogues of any commercial traveler or his employer, the carrier shall not be liable for any greater proportion of the value thereof or the damages sustained thereto than the excess baggage fare paid by the passenger bears to the current rate of freight on such line for like articles in like packages between the same points, but in no case shall the carrier be liable for more than the value of such samples, goods, wares, appliances, or catalogues.

Mr. RICHARDSON. What are you reading from?

Mr. CONBOY. From section 4.

Mr. ADAMSON. The excess baggage rates charged on that package were really higher than if it were shipped as freight?

Mr. CONBOY. Yes, sir. I do not know that the passing of this law would cause the railroads to cut down their rates at all.

Mr. ADAMSON. You are willing to pay the difference if this law is passed?

Mr. CONBOY. Yes. We are willing as soon as this law is enacted to pay the difference. Then commercial travelers' samples will have attained a legal status, and they will not be contraband of commerce when carried as baggage and not as freight; and, having so attained a legal status, we will be in a position to demand that they be carried properly and for a proper rate.

Mr. ADAMSON. What I want to understand is that the railroads could not complain that they were carrying that at a freight rate when they really charge a higher rate?

Mr. CONBOY. Yes; they are entitled to charge for the excess just as though it were personal effects. We are not asking for a discrimination between the rates on personal effects and commercial travelers' samples. All we ask the committee to do is to determine that this is legal baggage.

Mr. ADAMSON. When you reach your destination you want to have your samples with you?

Mr. CONBOY. Yes; certainly. Otherwise a traveling salesman can not travel. If he has to get his baggage by freight, and wait a long time at a place before the freight comes before he can canvass that town, he can not do any business.

Mr. RICHARDSON. And if it fails altogether to get there, you want to be allowed to claim damages, just as in the case of personal baggage?

Mr. CONBOY. Yes, sir. Those are all incidents of the same thing.

The CHAIRMAN. What is the trouble now? Why do you want it legalized?

Mr. CONBOY. It is not legalized now.

The CHAIRMAN. What is the trouble now? Has any railroad refused to carry it?

Mr. CONBOY. They do not refuse to carry it, but——

The CHAIRMAN. Very well, then; what is the trouble you want to get at?

Mr. CONBOY. We want to have the railroad companies compelled to carry it. They are not compelled to do so at the present time.

The CHAIRMAN. Are there any instances where they have refused to carry it?

Mr. CONBOY. I have instances where they have refused to pay for it when it has been lost.

The CHAIRMAN. What is the trouble you want to overcome?

Mr. CONBOY. They can stop carrying it at any time.

The CHAIRMAN. But they have not stopped. What is the trouble you want to overcome?

Mr. CONBOY. We want the status of it determined in a legal fashion, so that we can recover for it when it is lost; so that we can obviate unjust discriminations in connection with the carriage of it, and so that the railroad companies will be obliged to carry it, and for a proper rate.

The CHAIRMAN. What unjust discriminations have there been?

Mr. CONBOY. Instances of unjust discriminations have been cited by Mr. Sigler and other gentlemen in the carriage of it by different roads.

The CHAIRMAN. Do you know of any unjust discriminations?

Mr. CONBOY. I am merely an attorney at law. I am not an expert on the carriage of baggage.

The CHAIRMAN. Have you any instances?

Mr. CONBOY. I will ask Mr. Sigler for them. I can not give them to you offhand.

The CHAIRMAN. Cite a specific case.

Mr. RICHARDSON. Will you allow me to undertake to understand what you want? As I understand, the rule now of the common carrier is that a man is allowed 150 pounds of personal baggage. That goes along with his ticket?

Mr. CONBOY. Yes, sir.

Mr. RICHARDSON. If you go there and put in 150 pounds, also, of commercial baggage, the commercial drummer's baggage, consisting of shoes or any other articles, while you are not complaining of the rate at all that the railroads are making, and while you are not complaining that the railroads have rules made to carry that commercial baggage, you are complaining that in the event that 150 pounds of commercial baggage is lost, the railroads come up with the defense and say, "Yes, it is lost, but you ought to have shipped it as freight, when you shipped it as baggage."

Mr. CONBOY. That is one of the particular causes of complaint.

Mr. RICHARDSON. Is not that the leading one? You have no complaint about the discrimination of the railroads, have you?

Mr. CONBOY. No.

Mr. RICHARDSON. You have no complaint to make about high rates or unreasonable rates, but you are only trying to put that commercial baggage in a legal attitude, so far as the railroad is concerned?

Mr. CONBOY. Precisely. That is what I was endeavoring to say to the chairman. What I was seeking to do is, as you have so well phrased it, to put this commercial travelers' sample baggage in a legal attitude before the law. Now, after the sample-baggage right is attained, the right to demand damages for its loss or injury will be a right also, and then we also can go to the Interstate Commerce Commission and complain of an unjust or discriminating tariff affecting that baggage. As it is now, they say, "You have no right to demand that that baggage shall be sent as baggage." They say, "You should ship it as freight."

Mr. KENNEDY. Has not the common law clearly been changed by a universal custom ever since the first railroad started to run in this country, allowing you to carry the samples of traveling salesmen? Have not the railroads known continuously ever since the first railroad ran that the samples of traveling salesmen were not personal wearing apparel? Has not that system been universal, constant, and well understood?

Mr. CONBOY. Unquestionably so.

Mr. KENNEDY. Then, why have you not gone with your lawyer into the courts and insisted upon your right to have it recognized in a legal status?

Mr. CONBOY. Well, sir, the lawyers have gone into the courts.

Mr. KENNEDY. Then you must have sent the wrong lawyer.

Mr. CONBOY. A good many lawyers have gone into a good many courts, and they have always received the same answer every time.

The CHAIRMAN. You complain that the Interstate Commerce Commission now has no authority to fix the rates. Have you tried that method?

Mr. CONBOY. No, sir. We have not tried that method.

The CHAIRMAN. Why do you predict what the decision of the Interstate Commerce Commission would be, without an effort to obtain a decision?

Mr. CONBOY. Well, we have looked at it in this fashion: The Interstate Commerce Commission is bound to follow the law, and the law has made it plain that the travelers' samples are not baggage. We do not want them carried as freight, and we can not get the Interstate Commerce Commission to indicate that the distinctions which have heretofore been enforced by the courts shall not longer obtain and that these travelers' samples shall be considered as so much baggage hereafter.

The CHAIRMAN. You are assuming a certain condition of the law. The Interstate Commerce Commission has authority to regulate rates and the practices of the railroad companies as affecting rates?

Mr. CONBOY. Yes, sir.

The CHAIRMAN. Why have they not got the authority to regulate the rates of baggage in connection with passenger traffic?

Mr. CONBOY. This is not baggage under the present condition of the law.

The CHAIRMAN. That is a question, whether it is baggage or not.

Mr. CONBOY. I can submit a memorandum of authorities on that proposition.

The CHAIRMAN. You can submit a memorandum of authorities that the railroad companies make a regulation that they will carry

personal baggage, and not sample baggage, and be held responsible; but you can not say that the Interstate Commerce Commission has said that the interstate railroad companies shall not carry any kind of baggage that the commission says they ought to carry. You have not thought about that remedy?

Mr. CONBOY. We have not thought of asking them to disregard the decisions of the courts of law as to what is baggage. The only baggage known to the law is personal baggage, wearing apparel.

Mr. RICHARDSON. Then if the Interstate Commerce Commission can go in the face of all the decisions defining what baggage is, they can order a whole freight car to be hauled for the reception of baggage.

Mr. CONBOY. Then they have more power than I or anybody else thought they had.

Mr. ADAMSON. When the railroad company takes sample baggage, does it not know what it is?

Mr. CONBOY. Yes.

Mr. ADAMSON. There is no concealment in this?

Mr. CONBOY. No.

Mr. ADAMSON. Does not the drummers' baggage make up a large per cent of the baggage in the cars?

Mr. CONBOY. Yes. I have no doubt they cover up the greater part of the floor of the baggage car with their trunks.

Mr. KENNEDY. Do you know of a case where a railroad insisted on a special contract where you insist on taking sample trunks as baggage, and went into court and issued a mandamus and the mandamus failed?

Mr. CONBOY. No. The courts have refused relief.

Mr. KENNEDY. The whole complaint is this, that the railroads have made an assumption that they had the right to refuse that baggage, and you generally accept their statements as correct?

Mr. CONBOY. No, sir. We had to accept the decisions of the courts of law on the point; not merely the railroad company, but the railroad company fortified by the decision of the courts.

Mr. ADAMSON. The agents who receive and check those sample trunks never refuse to take them?

Mr. CONBOY. No, sir; but when the baggage is lost they say that they ought to have been shipped as freight, and not as baggage.

Mr. ADAMSON. I agree with Judge Kennedy. I do not think you have gone about it properly.

Mr. CONBOY. That is the law in England.

Mr. ADAMSON. The law as announced by the courts depends on facts in a particular case.

Mr. CONBOY. I am not thinking of any particular statement of facts with reference to the application of that distinction. It is the distinction that we complain of, and which we ask the committee to change, as the legislatures of Indiana and Missouri have done at the present time. Our bill is modeled on that passed by the legislature of Indiana, with some modification. We do not ask the committee to determine what rate shall be imposed for excess baggage. In Missouri they have drafted their law on the bill we framed in the last Congress, which did not receive attention by Congress.

Mr. ADAMSON. In what respect is the carrier damaged as a general thing with respect to the valuation? For instance, if you take 500

pounds of baggage, they will charge you for 350 pounds excess. Now, I want to know whether a commercial traveler's samples would be more valuable in a hunk of 500 pounds than a number of trunks aggregating the same weight full of low-neck dresses and laces and silks and fancy garments of that sort?

Mr. CONBOY. No, sir. Their tickets under which you ship your baggage and their tickets under which you ship excess baggage limit their liability, no matter what the value of the articles may be.

Mr. ADAMSON. Five hundred pounds of shoes would not be worth as much as 500 pounds of wearing apparel?

Mr. CONBOY. No, sir. In a case of shoes they might probably be all right-footed or all left-footed shoes. There would not be a complete pair of shoes in the entire trunk.

The CHAIRMAN. They are not any the less valuable on that account, however.

Mr. CONBOY. No; they would not be the less valuable on that account.

Mr. KENNEDY. I have read over section 4, and I can not understand what it means.

Mr. CONBOY. Well, sir, that is probably the fault of the men who drew it. That section means this: When a railroad company takes your excess baggage and charges you for it on a certain rate, and that baggage is lost, the railroad company shall only be responsible for such proportion of the value of the contents of that trunk as the excess baggage rate bears to the freight rate upon the same article, so that by compelling the railroad company to carry this as excess baggage, they are bearing a less rate for excess baggage.

Mr. KENNEDY. Then you would make proof of the real value of the thing lost and discount it?

Mr. CONBOY. Yes; discount it by the proportion that the excess rate bore to the baggage rate. You could not recover more than the value of the goods.

Mr. KENNEDY. Why is that fair?

Mr. CONBOY. It seemed to us to be fair, and we put it in as a matter of fairness to the railroads.

Mr. KENNEDY. It looks to me as though you were too generous to the railroads.

Mr. CONBOY. We want to give them something. [Laughter.]

Mr. KENNEDY. The railroads have been carrying your baggage right along always, and it is one of the customs of the business, and that custom is as much a part of your contract when you deliver your goods to be carried by the railroads as anything that is said or written.

Mr. CONBOY. You can never found a custom on a matter of deception.

Mr. KENNEDY. There is no deception in it. The railroads have always understood that your sample trunks are not clothing or personal effects. They are as much baggage, in my judgment, notwithstanding the holdings of the courts, as personal apparel.

Mr. CONBOY. Now our grievance is really against the legal definition, and that is the grievance we are asking to have remedied by legislation. We are asking nothing more than that.

The CHAIRMAN. But there is nothing in the bill that changes the definition.

Mr. CONBOY. Yes, sir. It says, "That the samples, goods, wares, appliances, and catalogues of commercial travelers" shall be considered as traveler's baggage. We say:

The samples, goods, wares, appliances, and catalogues of commercial travelers or their employers and used by them for the purpose of transacting their business and carried with them solely for that purpose, when securely packed and locked in substantial trunks or sample cases of convenient shape and weight for handling, are hereby declared to be sample baggage within the meaning of this act.

The CHAIRMAN. Very well. That is all.

Mr. KENNEDY. Why should not those samples be regarded as excess baggage?

Mr. CONBOY. If they are in excess of 150 pounds they are excess.

Mr. KENNEDY. If they are all samples, and not clothing or apparel or personal effects, why not charge for all of them?

Mr. CONBOY. That would be discriminating against the traveling salesman, who ought to have 150 pounds carried through the same as the ordinary tourist.

Mr. KENNEDY. I guess you are right about that.

The CHAIRMAN. Judge Pickett has some gentlemen here who would like to be heard in connection with the electric or interurban service as affected by the interstate-commerce bill pending. We have some hearings going on now. I suppose we will take a recess now until this afternoon. I do not know whether we will get through with this this afternoon or not, but we will go ahead to-morrow and Wednesday. I think we can hear you to-morrow or Wednesday. We may have to run them in between others. We already have people here who are designated to be heard on those days, but I think we will be able to hear your people some time during these days. They had better be here at 10 o'clock in the morning. Then we can see.

Mr. SIGLER. Do I understand, Mr. Chairman, that you are through with the excess-baggage proposition?

The CHAIRMAN. No, sir. I can not say positively that we are through yet.

Mr. CONBOY. We have finished our side, Mr. Chairman.

The CHAIRMAN. Very well. Then we will take a recess and hear the other side at 2 o'clock.

(Thereupon, at 11.45 o'clock a. m., a recess was taken until 2 o'clock p. m.)

#### AFTERNOON SESSION.

The committee reconvened at 2 o'clock p. m., Hon. James R. Mann (chairman) presiding.

#### **STATEMENT OF MR. HENRY P. DERING, GENERAL BAGGAGE AGENT MICHIGAN CENTRAL RAILWAY; HEADQUARTERS, CHICAGO, ILL.**

Mr. DERING. Mr. Chairman and gentlemen, I have been connected with the Michigan Central for thirty-six years, and as general baggage agent for twenty-eight years.

If you please, gentlemen, I would like to make a statement touching this matter in full, and then would be very glad to undertake to answer any question which I have overlooked. I am laboring



under just a little embarrassment in speaking to you, because of the change apparently in the programme touching the bills. The bill that is before us is in fact a rehash of what is known among railroads as the Indiana bill. It came up here in the second form, practically the same as it was passed in Indiana, except with a lower minimum charge. As I understand, the proposition here is to obtain the sanction of the Congress touching a certain phase of this matter, and to enable them to emphasize, in the other States where they propose to introduce this bill, and make it effective; and in consideration of a proposition to change in any particular the rates or the conditions governing certain traffic it is proper, we believe, to ascertain who is interested in the proposed change, in what manner those interested are affected, and who the especial beneficiaries are, and if a concession is made to certain interests if it will give those interests an undue advantage over their competitors in the same line of business. A careful consideration of the proposed enactment persuades us that there are four strong interests involved, and that the interests of one particular class are diametrically opposed to those of all the others. We will consider them in the following order:

First. The transportation lines and the question of a fair revenue for services rendered. Second. The larger wholesale houses, or those carrying the heavier or larger lines of samples, and who possibly represent 5 per cent of those interested or of those paying excess charges. Third. The smaller or less influential wholesale houses, carrying smaller lines of goods, and who presumably represent 75 per cent of those paying excess-baggage charges. Fourth. All other citizens who have occasion to patronize railways, a small portion of whom, however, only occasionally pay excess charges on personal baggage.

We will consider first the position of the transportation lines; and that we may better understand all points at issue I would state that in the earlier history of transportation the wants of the people were but few and the average wearing apparel carried by a passenger was insignificant, and when it seemed necessary to place some limitation upon it, it was first agreed that 50 pounds would be carried free, a little later 80 pounds, and after years 100 pounds, and finally, by almost universal custom, 150 pounds were allowed free for each passenger, and in making excessive rates over the free allowance the question of revenue was not seriously considered. The passenger fares ranged from 3 to 4 cents per mile, and as there was supposed to be a fair profit in the handling of the passengers while the excess rates were based upon substantially the 20 per cent of the 3 and 4 cent fares, the actual amount collected was insignificant.

We use the words "substantially 20 per cent of the passenger fares" for the reason that in the earlier days excess rates were made in fact on the mileage basis, but in time as competition came up it was necessary to meet the short line, and we went to the basis of passenger fares. Those fares ranged originally from 16 $\frac{2}{3}$  per cent, substantially, of 3 cent fares, and in the early eighties they were reduced to 15 per cent, and upon the passage of the interstate-commerce act we voluntarily reduced them to 12 per cent of 3-cent fares. I would explain that in making these rates we maintain a minimum of 15 cents per hundred, and then make the gradual increases of 5-cent raises in the

rates, using 12 per cent of the passenger fares only at the change of the 5-cent increase, the same as is now generally practiced under the present system. Under all of these previous tariffs the minimum rate of 15 cents had been maintained and the minimum charge of 25 cents, because we believed that those charges were fair and reasonable, having in view the terminal expenses of loading, handling, and recording the movements of such property, and the value of the service rendered in connection; and you will understand that this is all that is particularly involved in this controversy.

These tariffs are arranged to apply to fares of 3 cents per mile, which were in effect at that time; but upon the passage of bills by the legislatures of Ohio, Illinois, and other States, reducing passenger fares to 2 cents per mile, the excess rates were readjusted about December 1, 1907, with the idea of giving us substantially the same rate per 100 pounds under the 2-cent fares as had been in effect under the 3-cent fares, and we maintain that those rates are reasonable.

As applied to traffic, I would say that we never have discriminated against the commercial interests. We have always accepted their property for transportation. We have carried it at the same rates. In the earlier days it was a small institution. A few travelers came out from New York. It was not much of an institution, and we accepted it; but they gradually grew and took in the entire territory in time. Our tariffs are filed with the Interstate Commerce Commission, and we recognize a reasonable responsibility, of \$100, with the privilege of stipulating for a greater amount. We never have discriminated against them, and we never had any fight with them; but we never considered them in any sense benefactors of the railroad. This morning a young gentleman spoke about their going out and getting orders and the freight following. We consider that contention absurd. These gentlemen out selling goods, both the large and small shippers, are simply competing with each other in the distribution of a product for profit. What one gets, another loses. They absolutely create no business.

The CHAIRMAN. They are engaged in a very foolish undertaking then, I suppose?

Mr. DERING. No, sir.

The CHAIRMAN. How much do you suppose that it costs them a year to do that useless work?

Mr. DERING. Each one does it to get the business for himself.

The CHAIRMAN. They make money by spending money, or they would not be doing any good.

Mr. DERING. You misunderstood me, Mr. Chairman. I said they did not do us any good.

The CHAIRMAN. They do not do themselves any good unless they sell more goods by it.

Mr. DERING. Yes.

The CHAIRMAN. And if they do sell more goods by it, then they do create business.

Mr. DERING. You and I, Mr. Chairman, only wear so many suits of clothes a year, and we decide how many suits we shall wear. It does not make any difference what they do. When I was a young man A. T. Stuart & Co. were the greatest wholesale firm in the market, and when that house ceased to do business I think you can not find

a man in the United States that will say that the railroads ever lost a ton of freight or a pound of freight in consequence. We have had here certain interests representing that they wanted lower rates in Michigan, and that in consequence of the low rate in Indiana they had largely increased their sales. It was pointed out that this was a competitive business. If you increase your sales, presumably some small dealers' sales decrease. He said we were not looking after the small dealer.

As a matter of fact, Mr. Chairman, if these men go out and create business, they assume a great responsibility, and I do not see why, when we have hard times, they can not create some business to keep our roads busy; but, as a matter of fact, they are governed by the law of supply and demand. We have no power over that. Their business is perfectly legitimate, and they have their goods to sell and their profits to take, just as we have transportation to sell, and we claim we are entitled to receive a fair compensation for it. I will not bore you long on this, but we claim that we are opposed to this bill on this ground. Using the line I am connected with as an illustration, we have rules governing the transportation of samples, and we reserve to the Michigan Central the right to run its property in the interests of the great citizenship of the United States. There are millions of people interested in our railroads and transportation. One gentleman here said about 40 per cent of the travel on his road was by commercial travelers. I do not know where he gets his figures. I should say possibly 15 or 18 per cent of the travel on our lines may be represented by commercial travelers, and 5 per cent of them are particularly interested in carrying heavy samples. There are a great many commercial travelers carrying hand samples, and many of them pay no excess baggage. There are a few great firms whose salesmen carry large amounts of extra baggage.

In operating trains on a fast schedule we have hundreds of thousands of people to serve. We undertake in those schedules to give the greatest possible service to the greatest number, and we reserve the right with our fast through trains, if a man comes down there with, as our friend here said, a ton of samples, and that train is struggling with 300 passengers to make a through connection, and in case they miss that connection they would be put to great inconvenience, in that case to say we will not send that baggage on that express train, but on the local two hours later.

When we come into the great State of Indiana we can not do that. We had an illustration some time ago of that. Our through train No. 23 from New York to Boston, contending with the elements in the State of New York, was so far behind her schedule that the least further delay would make it impossible to make that connection, and we were doing all that we could, hoping to make it possible to save that connection, for the sake of our reputation— and you do not know how much money we all spend for our reputations; they ran a special train ahead from Buffalo to Chicago which cost over \$250 to see if they could not make it possible to save the connection for our patrons who had paid us their good money and who did not care anything about those goods—and we came to Michigan City in the State of Indiana, and there was a man showed up with more than 2,500 pounds of baggage, and he compelled us, under the law of the State of Indiana, to take that baggage and transport it to Hammond,

and we lost that connection. Outside of Indiana we undertake to run the railroad. We believe that we know better what is in the interest of all the people than that man, and we should be allowed to protect our people as against putting it in the hands of any single individual to jeopardize the interests of a great through train. It is particularly noted that in this bill that is the first point. They want you to pass a law which would make it possible for them to say "You will take that. I care nothing about your through service or your through passengers. I am selling goods." We think it is not in the interest of the public for them to be able to do that. On the public notice posted in our stations we say "We will give you the best service possible, and we reserve the right if it interferes with through connections, to send your baggage on another train." We are opposed to this proposed legislation on that score. We are opposed in a general way to the law in the way in which it is proposed. It is evident, as you will see in reading that, that the Indiana law—and these are all copied from it—was framed by some one representing a large dry goods house, the way those terms read, because we check every conceivable sort of a sample, and many which are not known in a freight rate sheet. For instance, the other day a gentleman complained of the rough handling of a piece of baggage by one of our men. That trunk contained his samples of jewelry, over \$25,000 worth. Would it be fair, when that trunk was going only 10 miles, in which case we would under our law make a charge of only 20 cents, to have to pay that man \$10,000 on an accident on a 20-cent investment? Now, we allow a reasonable limitation. If a man will pay us a reasonable price for increased valuation, we will take it; but there are an inconceivable number of things that are checked as samples which are not rated in rate sheets. What value is put on them?

Mr. STAFFORD. Do you take the position that the commercial travelers are not entitled to have their samples, needed in their trade, accompany them the same as ordinary travelers have the privilege to have their personal effects accompany them?

Mr. DERING. I will tell you what we do; we give the commercial traveler the same service as we give any other individual—a man with a single trunk; but if a man comes down there, we will say one individual, with a ton or so of samples, and he asks us to take him and sacrifice the through connection, we will not do it.

Mr. STAFFORD. Would you have any objection, from your standpoint, if the commercial travelers, so far as their sample baggage was concerned, should have the same privileges as you extend to the traveling public as to their personal baggage?

Mr. DERING. I do not know as I quite understand your question.

Mr. STAFFORD. I think the question is plain enough. Let the stenographer read it.

(The stenographer repeated the last question.)

Mr. DERING. We give that now. I do not know that it should be stated by law that we should do that as a general proposition, because that prevents us from using any discretion in saving the interests of our passengers.

Mr. STAFFORD. These commercial travelers are pursuing their vocation.

Mr. DERING. Oh, yes; a legitimate business.

Mr. STAFFORD. They need the services of the railroads, just the same as the traveling public needs the services of the railroads and has occasion also to carry its personal effects.

Mr. DERING. Yes; we give them that right.

Mr. STAFFORD. Should not these privileges be recognized by law and not be based merely upon the sufferance of the railroads?

Mr. DERING. Well, if you will make a distinction to say that a man can not carry over a certain amount. This gentleman said his friend had a ton of samples. We have known of a man who had a good deal more than a ton. Now, the question is, Where are you going to draw the line? If you say 150 pounds, we give them that now. Nobody discriminates against the commercial traveler except when it comes to those large shipments where a through train is jeopardized by an immense shipment of freight.

Mr. STAFFORD. Then as to personal baggage you would also reserve the right in those instances to withhold the personal baggage from those through trains and send it on slower trains?

Mr. DERING. We do reserve that right when we can not get it all on. Frequently we can not get it all on.

Mr. STAFFORD. Why should not these commercial travelers have the same privileges extended to them for what is necessary in the transaction of their business as the traveling public has as to their effects?

Mr. DERING. It is just like this. One is a freight proposition. Here is a gentleman carrying freight, and it is on the short haul. We do not think that a man should have the privilege of saying that we should be obliged to haul his freight on a particular train.

Mr. STAFFORD. You might as well say that the suits of underwear and the clothing that I need for a whole session of Congress could be sent by freight rather than by baggage; and yet there is more need for the commercial travelers to have their samples with them than for me to have my personal effects accompany me on the train.

Mr. DERING. The gentleman did not profess to have a grievance on that ground, as they said about that. The point is that they want to have it obligatory on us to carry them on these trains. We say we are willing to carry baggage for them. We do. They do not claim that we discriminate against them. We do not. But they want to get this point in to harmonize so that they can dominate our through special service the same as they do our local service. That is not in the interest of the people. The point I wanted to get at is this: We as business men try to operate these properties in the interest of the greatest number, and serve no special interests at their instance. We try to give the best service possible for the greatest number. We think our experience fits us to a degree to decide on that. Having met these contingencies that I speak of, we simply say, let us deal with these people fairly, as we have done.

The CHAIRMAN. Your motto is the greatest good to the greatest number?

Mr. DERING. To a degree; yes, sir. We can not operate our properties in the interest of the few. The question of course is one they are interested in; it is a question of expense. When you consider the question of the rates—they rather sidestepped that question—the rates are very close to the freight rates. In the State of Indiana they are only

about one-fourth the freight rates. In fact, we are carrying quantities of freight in Indiana on passenger trains, to the detriment of every citizen of the State of Indiana, at less than freight rates on freight trains. That is asking a good deal of us.

The CHAIRMAN. Let me ask you a question in that connection. You now carry passengers in the State of Indiana for 2 cents a mile?

Mr. DERING. Yes, sir.

The CHAIRMAN. And you carry baggage under the Indiana state law much more freely than you do interstate baggage?

Mr. DERING. Yes; a good deal cheaper.

The CHAIRMAN. Do you think it is quite fair to the people, do you think it is on the principle of the greatest good to the greatest number, that you should carry passengers for less money in Indiana and with more baggage than you do for people who go across the state line out of Indiana into another State?

Mr. DERING. No; we should not do it.

The CHAIRMAN. It is contradictory of that motto?

Mr. DERING. It is against our motto, but we are compelled to do it by the state enactment.

The CHAIRMAN. No; you are not compelled to do it by the state enactment. There is no state enactment stating what you should charge on going outside of the State.

Mr. DERING. No; but, Mr. Mann, you will pardon me, the Indiana rate is made so low that it is absolutely unremunerative. Nobody claims that it is remunerative. It is simply made in the interest of a few people, a few big firms. Now, because we are, I might say, robbed in Indiana, should not be any reason why we should turn around and rob our stockholders, who employ us, in another State. In conversation with one of the higher officials of our line, he assured me that they had an assurance that at the next session of the legislature of Indiana the legislature would voluntarily rescind the law of Indiana; but in the meantime, as I said, these measures are being proposed and urged in other States.

The CHAIRMAN. You did not have to pay anything for that assurance, I suppose?

Mr. DERING. What?

Mr. ADAMSON. The chairman understands that you had great faith to rely on that assurance of that one member of the legislature.

Mr. DERING. Well, I have not much; no, sir. The State of Indiana has rates like this: Where the passenger fares are from 1 cent to 6 cents, the excess-baggage rate is 1 cent a hundred; and where we get up from 1 cent to 12 cents, it is 2 cents, from 13 to 18 cents it is 3 cents, and from 19 cents to 24 cents it is 4 cents. Now, under our rates which usually obtain we establish a minimum rate of 15 cents a hundred; and because of the energy required in giving this service at the initial and terminal stations, it costs just as much to take a ton of samples and take it into the baggage room and weigh it and make out the excess receipts and load it on the truck and run it to the train and put it on to run 10 miles and unload it and deliver it, just as much energy is required on the part of the transportation line in giving that service as is required in transporting it 200 miles where the rate would be remunerative.

The CHAIRMAN. And yet you charge only 2 cents a mile for the passenger that makes that short journey, and if he goes 200 miles

you charge him 3 cents a mile, and then say that you are doing what is for the greatest good of the greatest number!

Mr. DERING. You are not talking about the baggage rate?

The CHAIRMAN. No; I am talking about the passenger rate, upon which you predicate the baggage rate.

Mr. DERING. No; the passenger rates in Indiana are 2 cents. I am speaking of the principle of the minimum rate. That is the principle involved here.

Mr. ADAMSON. On excess baggage?

Mr. DERING. Yes; I am speaking of excess baggage. Now, in the State of Indiana we have many movements, as these gentlemen say here, short hauls, where we move excess baggage on express passenger trains at 4 cents a hundred, where the freight to the man, the merchant, when he gets his freight, would be 14 cents. It is a ruinous rate. We are opposed to this first on the ground of the loss of revenue.

Mr. ADAMSON. Why do you do that?

Mr. DERING. Because of the law of the State of Indiana.

Mr. ADAMSON. Is there any compulsion on you to do it?

Mr. DERING. It is the same law which is in effect in Indiana, which is before you here.

Mr. ADAMSON. Does that law prescribe your excess-baggage charge?

Mr. DERING. Yes.

Mr. RICHARDSON. What did the gentleman who preceded you mean, or what did you understand him to mean, when he said or contended that all he wanted was to put the commercial shipment in a legal attitude? Does that mean that when you ship that commercial man's baggage and it is lost, you come up and say to him: "Well, you did not ship it as baggage, and you put it in a trunk, and we will not pay you at all?"

Mr. DERING. He was not talking about me.

Mr. RICHARDSON. He was talking about railroads.

Mr. DERING. He was talking about something away off.

Mr. RICHARDSON. You heard his story, and you heard him say that he wanted to put it in a legal attitude?

Mr. DERING. Yes; I heard it.

Mr. RICHARDSON. For the reason that if he shipped his commercial goods in a trunk, and they were lost, the common carrier would not pay for them for the reason that he had not shipped them as baggage?

Mr. DERING. That does not apply to us in the same way. The gentleman gave an illustration of the laws in the State of New York. They acknowledge \$150 responsibility in the State of New York, on the New York Central. They allow the passenger to carry his samples worth more if he will pay for an increased valuation. It does not have reference to us. We are operating the Michigan Central and the Big Four and the Lake Shore, all of them carrying samples, and acknowledging a reasonable amount of responsibility. We have always been willing to do that. But I put my citizenship above my loyalty to the Michigan Central, and I say that I believe that it is detrimental to the citizenship of the United States for you to go to work and put it in the power of certain great houses to make freight trains out of our passenger trains, and by law to compel us to do that. There is no discrimination there. It was not intended. I presume some railroad men sometimes may have done something wrong, but—

Mr. ADAMSON. I thought you made a good deal higher rate on excess baggage, and I thought that I proved it by that gentleman this morning.

Mr. DERING. No.

Mr. ADAMSON. I do not see why you do not hire a lawyer and go to suing somebody on this Indiana statute.

Mr. DERING. There are men who know more about it than I do. I have tried to get them to do that, but the excuse is given, and I will give it to you. We have met a good deal of legislation in different States and we have met some bills in Congress, all of them supposed to be in the interest of the great mass of the citizenship. Some of them we have opposed. When this bill passed in Indiana, I went before the committee of the house and undertook to show the unfortunate features of that bill. Now, that bill in Indiana was calculated to build up 10 or 12 great firms, and kill commercial travelers as a class, and the chairman of that committee said, "Mr. Dering, if this bill is as abominable as you say, you have redress in the courts." I said, "Well, it is an imposition, I claim, for you to put it up to us to assume the odium of going into court and having your action pronounced unconstitutional. You represent us. We have more employees in Indiana than there are commercial travelers, and the interests of those employees are affected in a diametrically opposite manner." Well, they passed it. I want to say this: I am a man who travels over 55,000 miles a year, and I have been in the transportation business for twenty-five years, and presumably I know as many commercial travelers as any man in this room. I meet hundreds of them. I will confide to you that I have had many a commercial traveler traveling for big houses approach me within the last ten days and say: "Go in." They are hoping we will win. Why? Because they know that that rate, if it goes into effect in other States, is death to the commercial travelers' institution. Why? Because a few great houses would absorb the whole business.

The CHAIRMAN. Has it had that effect in Indiana?

Mr. DERING. It has had that effect, in a degree, with them.

The CHAIRMAN. Do the commercial travelers look upon it that way? They are most interested.

Mr. DERING. I am a very busy man, as all of you here are, and I do not go around asking these men questions.

The CHAIRMAN. You are not so busy but that you are endeavoring to present the best interests of the commercial traveler.

Mr. DERING. The commercial traveler is my friend.

The CHAIRMAN. I wanted to know what they thought about it.

Mr. DERING. The commercial traveler is in a peculiar position, sometimes. I am putting it to you that many commercial travelers are anxious that that rate be eliminated in Indiana, and for the reason that the greatest beneficiary under that rate in the State of Indiana is a great firm located in Chicago. They make more out of it than anybody else.

The CHAIRMAN. What firm is that?

Mr. DERING. I might say Marshall Field & Co., presumably. Marshall Field & Co., I suppose, more than any other. I have no personal prejudice in the matter.

Mr. BARTLETT. They are mighty fine people, I know; they are square dealers.



The CHAIRMAN. Do their men carry very heavy excess baggage?

Mr. DERING. Yes; they carry heavy excess baggage. This point, Mr. Chairman, you will remember in this connection, that if a man can go at a lower proportionate rate into the small towns, at a less proportionate rate than a small dealer, it gives him a very great advantage. That is what this bill is gotten up for; it enables them to visit the smaller towns at a much less proportionate rate than the small dealers. Take a man that has 25 pounds excess; he is traveling for a small house. He goes over here 10 miles and he has got 25 pounds. Now, under the rate in Indiana he would pay, say, 25 cents. But a man who goes over there with a ton would pay only half a dollar. He would pay 25 cents extra for over 25 times the service, and he would have an immense advantage. Your wife and my wife, looking for goods—and you, going for goods yourself—go where there is the best exhibit. That law was passed in Indiana as special legislation. I do not wish to be understood that the members of the legislature passed it with that idea, but that it was sought by partial interests because it was calculated to give them a great advantage over the smaller dealers; and a representative of one of the greatest houses in the United States approached me and stated that the interests of the Michigan Central would be served if I would use my influence in getting that rate into some other States. I declined. I said: "So long as I live and am a factor in making a rate every commercial house in America, whether large or small, shall stand with an equal chance with the Michigan Central." Thank you.

The CHAIRMAN. I would say that we would like to have statements now from the men who are practically familiar with baggage matters.

#### STATEMENT OF MR. F. J. M'WADE, GENERAL BAGGAGE AGENT OF THE PENNSYLVANIA RAILROAD COMPANY.

Mr. McWADE. Mr. Chairman and gentlemen, as I understand the matter, under this bill it is proposed to extend the definition of baggage, which has heretofore obtained ever since railroads were built, as wearing apparel and the toilet effects of a traveler going on a journey, to include samples of merchandise, goods, wares, and so forth, for the purposes of the commercial traveler and the owner of such goods. If this bill as it reads should become a law the practical result would be that a passenger, upon presentation of a ticket from Washington to New York, or from Washington to San Francisco, could bring a dozen wagonloads of goods and wares, or half a carload, and require that to be checked to the destination of the ticket, whatever it might be. That would be tantamount to extending the passenger-train service to cover freight business; because, if the English language means anything, it means that a man can take an unlimited quantity of goods and wares and take them on a passenger ticket and sell those goods and wares at destination. Such a proposition as that would be little less than revolutionary, and that is one of the grounds of our objection to it.

Mr. STAFFORD. How many baggage cars do they generally carry on a limited train?

Mr. McWADE. One; and what we claim is that this bill would compel the railroad company to carry goods, wares, and merchandise on a

railway ticket to destination, and not only carry samples, but the goods themselves for sale.

Mr. ADAMSON. I suppose the custom of carrying baggage originated in the desire of the traveler to have his wardrobe and toilet arrangements with him?

Mr. McWADE. Yes; that originated when the railroads were new, and about all the baggage that a man had used to consist of a carpet-bag or a haircloth trunk.

Mr. ADAMSON. And all he had was a change of clothing and his toilet articles?

Mr. McWADE. Yes; a few small possessions.

Mr. ADAMSON. It never contemplated his carrying along the material of a mercantile business as an appendage?

Mr. McWADE. It certainly never contemplated compelling the railroad company to carry merchandise, intended for sale at destination, on passenger trains.

Mr. BARTLETT. That is the construction you put upon this part of section 1:

Receive and transport with each passenger tendering the same the baggage, including the sample baggage of such passenger, not exceeding one hundred and fifty pounds for an adult and seventy-five pounds for a minor less than twelve years of age, and such baggage shall be carried without compensation other than the passenger transportation charge. All baggage, including sample baggage as defined by this act, in excess of the weights here specified is hereby declared to be excess baggage.

Mr. McWADE. Does it not say later in the bill "goods, wares," and so forth?

Mr. BARTLETT. Yes; "of commercial travelers or their employers."

Mr. McWADE. Yes.

Mr. BARTLETT. That is in section 2.

Mr. McWADE. Might it not be his purpose to sell those goods at destination?

Mr. BARTLETT. It might.

Mr. McWADE. Then we are compelled under this law to carry them on presentation of a ticket

Mr. BARTLETT. It looks like you are.

Mr. McWADE. Yes.

Mr. KENNEDY. How long have you been connected with the baggage business?

Mr. McWADE. It is so long that I have to stop and think a little. It is about thirty years.

Mr. KENNEDY. Could you tell us how the baggage carried by the commercial traveler has been increased in quantity during that time? Is it greater in quantity now than it used to be?

Mr. McWADE. Far greater; yes, sir; it was a system that sprang up and grew gradually, the system of selling goods by sample in this country.

Mr. KENNEDY. I suppose fifteen or twenty years ago it would be a remarkable thing for a drummer to have 1,500 pounds of samples?

Mr. McWADE. Oh, yes; it has very materially increased; and while we have no direct proof, because, checking 30,000 or 35,000 trunks a day, we can not follow those trunks up to destination and see what people do with them; we suspect altogether there is a pretty large percentage of that kind of goods—that is, of goods for sale at destination, and I think if it was authorized by law the amount would be heavily increased.

Mr. STAFFORD. You do not mean to maintain that the commercial travelers of large, reputable houses will engage in carrying, in their trunks of samples, the goods that they sell throughout the country?

Mr. McWADE. I do not mean to imply anything, but I mean to say that if this bill is passed in the language that is used, if it suited the owners of that baggage to do that with it we would be compelled to carry it for them.

Mr. STAFFORD. You said that you conjectured that that might be the practice.

Mr. McWADE. Yes.

Mr. STAFFORD. And I was asking if you believed that that was the practice of commercial travelers of reputable commercial houses?

Mr. McWADE. I do not know. I could not answer that question.

The CHAIRMAN. Do you make any effort to prevent that now?

Mr. McWADE. No, sir; it is impracticable to do it. How could we do it?

The CHAIRMAN. I do not know. Do you accept all sample baggage that is presented to you?

Mr. McWADE. I have heard occasionally of reports in the Southwest or somewhere out West where it was known that some one who had checked baggage from New York was selling it there out of trunks, but I could not follow those matters up, and I am not concerned in that, particularly.

The CHAIRMAN. Does your road accept all the sample baggage that is presented to it for carriage?

Mr. McWADE. Yes.

The CHAIRMAN. Without question?

Mr. McWADE. Without question; yes, sir.

Mr. RICHARDSON. Why do you do that? Is it because you have not got any authority to unlock a man's trunks and see what he has got in there, and you do not want that authority?

Mr. McWADE. No.

Mr. RICHARDSON. You do not want it, do you?

Mr. McWADE. We presume that it is proper matter for checking.

Mr. ADAMSON. The drummer does not make any secret about the contents of his sample cases?

Mr. McWADE. We do not make any question about it.

Mr. ADAMSON. Does the Indiana drummer to-day get his samples shipped as excess baggage at a lower rate than as freight?

Mr. McWADE. I was rather surprised that this rate question was raised, because these gentlemen this morning expressly disclaimed any contention to bring that up.

Mr. ADAMSON. It might affect the matter to know that for hauling baggage on a special train you get a little higher price as a special facility than for doing it on a freight train.

Mr. McWADE. I will say that for three-quarters of the business the freight rate is no higher than it was twenty years ago.

Mr. KNOWLAND. What is the rate from New York to Chicago?

Mr. McWADE. I could not give you that. It is practically what it was—

Mr. ADAMSON. I am not talking about lowering rates; I am asking if you haul it as excess baggage at a lower rate than if you hauled it as freight. That is what the gentleman said was done in Indiana. That is not done on your trains?

Mr. McWADE. No, sir; if this bill as originally drafted, requiring the rate to be  $12\frac{1}{2}$  per cent for 100 pounds of the ticket rate, had passed, in very many cases we would carry so-called sample baggage a distance of 40 miles or less at about one-fourth of the freight rate.

Mr. ADAMSON. I am talking about what you do now. This bill has not passed yet.

Mr. McWADE. Yes; no, sir.

Mr. ADAMSON. Is it true now that you haul excess baggage at a less rate per hundred pounds than you would haul it for if it was on a freight train as freight?

Mr. McWADE. No, sir; we do not.

Mr. ADAMSON. That is all I wanted to know.

Mr. McWADE. Yes.

The CHAIRMAN. You charge a considerably higher price, do you not?

Mr. McWADE. I did not go into that question at all.

The CHAIRMAN. Do you not charge about the same as express rates?

Mr. McWADE. About.

The CHAIRMAN. That has been my experience.

Mr. McWADE. About. The rate per hundred pounds from here to New York is 95 cents. I believe it has been that for twenty years. What the freight rate is per hundred pounds I do not know.

Mr. BARTLETT. It is about one-half that.

Mr. McWADE. Well, Mr. Chairman, this has already been referred to at some length, but I will just add that, as if it would not be enough to compel us to carry merchandise for sale if it suited the purposes of the owners of the baggage to do so, we are further called upon to discriminate in favor of a small class—as Mr. Deering says, not over 15 per cent—and carry it in all cases on the same train with the passenger. As you are aware, the free allowance of baggage is 150 pounds without further charge, and thus the price of the passenger ticket is more liberal than in any other place on the globe, with the possible exception of England, on a first-class ticket; less than that on a second-class ticket in England. Nowhere on the globe is the allowance as much; and it is impossible to carry even this personal baggage, invariably and under all circumstances, on the same train with the passenger. There is always the intention and the effort to do so.

Mr. BARTLETT. Frequently a passenger wants his baggage to go ahead of him, does he not?

Mr. McWADE. Very frequently.

Mr. BARTLETT. I do, very often.

Mr. McWADE. As I say, there is always the effort and intention to do so on the part of the carrier, but occasional exceptions to the rule can not be avoided. There are exceptionally heavy movements at times which can not be foreseen, and for which the baggage-car space, ordinarily sufficient, is inadequate, necessitating the dispatch of some of the baggage by following trains. There are times also, particularly in the summer season, when it is necessary and expedient to load baggage cars solid with baggage and dispatch them by any trains which are enabled to haul them. Then, again, there are other occasions, such as mark the great rush of travel homeward from the seashore and mountains in the summer time, when we have

to make up whole trains of baggage cars, containing nothing else, and dispatch them over the road.

Mr. BARTLETT. And sometimes it takes weeks to get them to their destination?

Mr. McWADE. Of course, there is great difficulty at the Grand Central Station in New York, and at Twenty-third street, every autumn; but it does not last long. To differentiate between different kinds of baggage, to put one kind in a category by itself and then compel the railroads to carry it on the same train, in all cases, with its owners, regardless of the rights and interests of the great mass of the other passengers, we submit would grossly violate all considerations of reason and equity. That is about all I would have to say.

The CHAIRMAN. If this bill were a law, in what respect would you be compelled to act differently from what you now act with regard to this baggage?

Mr. McWADE. Well, we would have to carry what anybody offered.

The CHAIRMAN. Do you not now carry it?

Mr. McWADE. Yes.

The CHAIRMAN. What I want to know is, in what way would this bill, if enacted into law, compel you to differ from your present methods of acting?

Mr. McWADE. It would compel us to differ in this, that we would have to carry it on the same train with the passenger. We are not compelled to do that now, and when we can not do it we do not do it.

The CHAIRMAN. That is one difference. What other difference is there?

Mr. McWADE. The other difference is that we would be compelled to carry whatever anybody might offer in the way of goods for sale.

The CHAIRMAN. That is an assumption on your part. You now carry anything that is offered?

Mr. McWADE. We now carry anything that is offered; yes, sir.

The CHAIRMAN. So that the law would not change your situation any at all as to that?

Mr. McWADE. No, sir.

The CHAIRMAN. From what you now do?

Mr. McWADE. No, sir.

The CHAIRMAN. Is there anything else that it would make a change in?

Mr. McWADE. Nothing that I know of, except in the matter of the rates. That is not touched upon in this bill.

The CHAIRMAN. There is no rate fixed in this bill?

Mr. McWADE. No.

The CHAIRMAN. So far as the first proposition is concerned, if we should compel the sample baggage to be carried——

Mr. McWADE. Yes.

The CHAIRMAN (continuing). Without stating what train it should go on, that would eliminate that objection?

Mr. McWADE. That is, that it should be carried on the same train with the passenger?

The CHAIRMAN. No; simply stating that the extra baggage shall be carried, without stating what train it is to go on. There is no law now that says that the personal baggage shall go on the train with the man who owns it.

Mr. McWADE. No.

The CHAIRMAN. Supposing we should strike out from the bill that part which says that the baggage shall be carried with the passenger, as required by this act.

Mr. McWADE. Yes.

The CHAIRMAN. And simply require you to carry sample baggage—

Mr. McWADE. Yes.

The CHAIRMAN. As you now carry extra baggage. That would eliminate your first objection?

Mr. McWADE. You mean to say, then we would be willing to have the law passed?

The CHAIRMAN. That is what I am trying to find out.

Mr. McWADE. No; we would not.

The CHAIRMAN. What objection have you to that part of it?

Mr. McWADE. I have this objection, that the baggage service is primarily organized for the transportation of the wearing apparel and personal effects of the great mass of the public that comprises our principal travel, and my objection would be that it is now voluntary on our part, and we will do the best we can, but if at any time the exigencies, the interests, of the great mass of the public required it, we would be deprived of all our discretion to regulate it, and dispatch it.

The CHAIRMAN. Then your objection is to being required to carry sample baggage at all?

Mr. McWADE. No, sir; our objection is that we do not wish to be deprived of the power to regulate.

The CHAIRMAN. There is nothing in here which would deprive you of the power to regulate.

Mr. McWADE. Yes, there is, if it is passed as a law.

The CHAIRMAN. No, I am talking of section 1. There is nothing in there to regulate anything, except to require you to carry the sample baggage and excess baggage. Now, have you any objection to being required to carry sample baggage in the same way that you carry personal baggage and carry excess baggage?

Mr. McWADE. I would object to it—that is, to being compelled to do it by law.

Mr. RICHARDSON. Do you not carry it now without the law?

Mr. McWADE. We carry it without the law.

Mr. RICHARDSON. You carry the commercial baggage, as I understand it; you carry it as you please?

Mr. McWADE. Yes.

Mr. RICHARDSON. You put it on a freight car?

Mr. McWADE. Yes.

Mr. RICHARDSON. You do not put it on a baggage car?

Mr. McWADE. Yes; but that is voluntary on our part.

Mr. RICHARDSON. It is voluntary on your part; you put it where you please?

Mr. McWADE. Yes.

Mr. RICHARDSON. Would it alter your position if this law were passed, in any way, shape, or form, so that if you lost a commercial shipment you could not put in a defense according to what you have been doing heretofore; could you put in as a defense that that man ought to have shipped that by baggage, and therefore you will not pay him at all?

Mr. McWADE. We never refuse to pay him.

Mr. RICHARDSON. You never refuse?

Mr. McWADE. No, sir.

Mr. KENNEDY. I understand you fear if this law was passed, then there might be so much of this baggage come to you that they would demand of you to carry that you would not be able to carry baggage for others that were offering wearing apparel?

Mr. McWADE. Yes.

Mr. KENNEDY. They would overcrowd your cars?

Mr. McWADE. They would overcrowd our cars; particularly if they were allowed to carry goods for sale.

Mr. KENNEDY. Then might there not be an amendment that you could suggest, correcting that feature of this bill?

Mr. McWADE. I do not know what I could suggest. I would not like to suggest anything that would take the power to regulate that business out of the hands of the railroads, if exigencies might arise. It is in a sense voluntary now, and it would be made involuntary then, for all time. It would not make any difference whether we would like to change it then or not.

The CHAIRMAN. You say it is voluntary now. I do not understand what you mean.

Mr. McWADE. Well, it is voluntary in the sense that it is not absolutely required by law.

The CHAIRMAN. Are you permitted to carry anything that is not fixed by law?

Mr. McWADE. Are we committed to?

The CHAIRMAN. Are you permitted to?

Mr. McWADE. No, sir; what we are permitted to carry or what a passenger is entitled to have carried, under his ticket, is defined as his wearing apparel and toilet effects, and so forth.

The CHAIRMAN. You can not carry the commercial sample baggage of one man and refuse to carry it for another?

Mr. McWADE. Oh, no; certainly not.

The CHAIRMAN. It is voluntary with you to do business at all, from your point of view?

Mr. McWADE. It certainly is voluntary—

The CHAIRMAN. If your railroads would undertake to stop doing business, you would ascertain very quickly that it was not voluntary.

Mr. McWADE. We do not contend that it is voluntary, but we do not want to be compelled to carry it under circumstances that might arise to the detriment of the traveling public.

The CHAIRMAN. You do it now, and you say you do not want to do it. Why do you do it, if you do not want to do it?

Mr. McWADE. We do it within bounds.

The CHAIRMAN. You do it under any bounds that are submitted to you?

Mr. McWADE. There never have been any bounds. We would expect very soon to be within bounds if this law should pass. There would be a great freight traffic done in our baggage cars.

Mr. RICHARDSON. I can not understand, if you are doing it now, freely and without objection on the part of the common carriers, if a law should be passed requiring you to do it, why you should object to it.

Mr. McWADE. But it is limited now.

Mr. RICHARDSON. This is the provision you object to?

Mr. McWADE. Yes; the amount is limited, and it is limited to wearing apparel, and so forth.

The CHAIRMAN. We are trying to find out about it.

Mr. McWADE. Do you not understand that we might be called upon under this bill, which would permit goods for sale to be carried to destination, to carry a great deal more than we do now?

The CHAIRMAN. I think not. If this bill should be enacted, this committee would take charge of anything of that kind. But the bill is drawn, and you fear that it will not be properly corrected by the committee to cover such things, without being against the principle of the bill. Nobody is going to permit a bill to be passed that will permit the carrying of freight on fast passenger trains.

Mr. McWADE. That is the way the bill reads now.

The CHAIRMAN. That is your construction of the bill, merely.

Mr. BARTLETT. You said that the rate for excess baggage is ordinarily about the express rate?

Mr. McWADE. Is ordinarily about the express rate; yes, sir.

Mr. BARTLETT. Now, you think men who intended to sell goods, commercial travelers, would put in and carry any considerable amount of goods at the express rate when they could send it by freight for one-third or one-half as much?

Mr. McWADE. They could, in many instances.

Mr. BARTLETT. Do you suppose they would do that in many cases, ordinarily?

Mr. McWADE. They might; yes, sir. They do sell those samples that are capable of being sold as samples at destination.

Mr. BARTLETT. I did not ask you that question. You said that you would have to accept goods intended for sale; not simply samples?

Mr. McWADE. Yes.

Mr. BARTLETT. Under this construction of this second section, if anyone offered you baggage which contained goods for sale for carrying on their business, in excess of such and such an amount, you would charge them the excess baggage rate, which is about the express rate?

Mr. McWADE. Yes.

Mr. BARTLETT. Now, would a man engaged in doing business to any considerable extent pay you express rates for his goods, for carrying his baggage, which he could very readily send by freight at a much less rate?

Mr. McWADE. In distances of 40 miles he could send them for one-fourth of the freight rate.

Mr. RICHARDSON. If you were at home now on your road, and a mercantile man, a broker, should come up and give you 10 trunks, these big trunks, you would send them off for him?

Mr. McWADE. Yes.

Mr. RICHARDSON. You would ship them to wherever he directed you to?

Mr. McWADE. Yes.

Mr. RICHARDSON. What would be the difference if this were to become a law?

Mr. McWADE. I should expect that where there are 10 now there might be 25 if this became a law.



Mr. RICHARDSON. I am not asking you about what might be, but I am talking about what is.

Mr. McWADE. Yes.

Mr. RICHARDSON. What is the fact? If the 10 trunks are there and you receive them from the broker and ship them, what difference would there be about shipping those trunks as you ship them now and as you would do it if this bill were to become a law? How would it affect that shipment?

Mr. McWADE. It would not affect that shipment, except if that shipment contained goods for sale it would be a lawful transaction on the part of the commercial man, and it is not now.

Mr. RICHARDSON. You said that it might be 25 trunks instead of 10. If he was to offer you 25 trunks you would ship them now?

Mr. McWADE. Yes; of course, I would have no recourse if it was permitted by law to do it. Now we have a defense against such an increase as that.

Mr. RICHARDSON. What is your defense?

Mr. McWADE. We can fight it. It is unlawful.

Mr. RICHARDSON. On the ground that it was not baggage?

Mr. McWADE. Yes.

Mr. RICHARDSON. You would fight it on the ground that it was not baggage?

Mr. McWADE. Yes.

Mr. RICHARDSON. And the railroad would escape from it by that plea of defense?

Mr. McWADE. Yes. Of course, Mr. Mann says that he can have this bill so drawn as that it will mean something else than what it means now; but as it reads now he could increase that shipment from 10 to 25 trunks full of goods and sell them at destination.

Mr. RICHARDSON. But if he hands you 10 trunks now for transportation, you do not charge him like you do for personal baggage now?

Mr. McWADE. We charge him excess weight, yes, sir; the same as personal baggage.

Mr. RICHARDSON. The same as personal baggage?

Mr. McWADE. The same as personal baggage. There is no discrimination. It is all assumed to be baggage, at excess rates.

Mr. RICHARDSON. Then the only distinction in this law, as I can get it from you, is that if the law was passed you would be cut out of that defense that you can make now—that is, that it was not baggage, and therefore the common carrier can escape?

Mr. McWADE. No, sir; that is not the point. The point is, that if this is passed the element of voluntariness is taken from us, and there is no power to regulate it if we want to.

Mr. BARTLETT. You mean by that, if a man comes up and gives you an extraordinary number of trunks, which it is apparent are not intended for his business, you can decline to carry them now? Under this bill you could not. Is that what you mean?

Mr. McWADE. Yes; and if we found out afterwards that he had violated the law we could prosecute him for it.

**STATEMENT OF MR. W. M. SKINNER, GENERAL BAGGAGE AGENT  
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD,  
ALBANY, N. Y.**

Mr. SKINNER. If the chairman will permit me, I would like to attempt to make a little bit more clear what Mr. McWade has tried to say about the objection to the principle of the bill recognizing samples of merchandise as baggage and the language as it is laid out here. I am not sure that under the interpretation of this bill any goods or wares packed in trunks belonging to commercial travelers or their employers would not be accepted and checked as baggage. It has been asked, if we are now accepting them, why should we object to such an enactment? We do accept legitimate samples of merchandise, and we occasionally run across illegitimate shipments of that character. For instance, a large business has a store in one town and some 50 or 100 miles away they have another store. It is a very easy matter for them to pack up a lot of sample trunks of goods to interchange between these stores and take them to the baggage room, and if we handle these sample trunks as baggage, present a ticket sufficient to cover the baggage, and get it through for nothing. There would not be any charge.

The CHAIRMAN. They can do that now. You have no way of avoiding that.

Mr. SKINNER. We have this way. We are supposed to be alert and to watch the movements of baggage over our road, and I am free to confess that we have found several such instances in the past, and have called the attention of the offenders to the violation of the law, and have succeeded in stopping it.

Mr. RICHARDSON. What did you mean when you said they would present a large number of trunks with merchandise of that sort packed in them going to another store that they owned; that they would present that many tickets and they would have it transported free?

Mr. SKINNER. That is what they did. They would present a mileage book and would request us to take out for five passengers. If they had 750 pounds of baggage, it did not cost them anything. Every traveler uses up this mileage without baggage. The great majority of people in this country use mileage without any baggage. It is easy to dispose of a ticket with a canceled baggage privilege.

The CHAIRMAN. They could not send five trunks anyway, unless they sent five people.

Mr. SKINNER. We do not require that a man should present five passengers with his baggage. We are daily checking baggage with as many as ten tickets. The porter of the hotel will bring the tickets down, and the passenger does not show up at all.

The CHAIRMAN. You are accepting baggage for transportation without collecting the excess on it?

Mr. SKINNER. Yes, sir.

The CHAIRMAN. Although under the Hepburn bill you are liable to penalties for doing so.

Mr. SKINNER. This bill says that we shall accept excess baggage, and if a man has 10 tickets and a certain lot of baggage, the baggage goes on those 10 tickets.

The CHAIRMAN. But the man has to buy the tickets first, does he not?

Mr. SKINNER. He does; yes, sir; but he can have a mileage book.

The CHAIRMAN. Well, take a mileage book. If I present a mileage book to you, how many trunks will you check on that?

Mr. SKINNER. We would check according to how many passengers you said were going with them.

The CHAIRMAN. You would take my word for it?

Mr. SKINNER. We accept your statement as to how many passengers are going on that mileage book.

Mr. RICHARDSON. Do you allow anybody except the purchaser of the mileage book to ride on that mileage ticket?

Mr. SKINNER. Yes, sir.

Mr. RICHARDSON. I thought you did not allow anybody except the man who purchased the thousand-mile ticket to ride on that mileage.

Mr. SKINNER. The New York Central mileage book is absolutely without restriction.

Mr. BARTLETT. So is the Pennsylvania mileage book.

Mr. WASHBURN. When the mileage book is presented, you do not inquire how many passengers are going; you take as many trunks as are offered until the baggage slips are exhausted?

Mr. SKINNER. Oh, no, sir.

Mr. WASHBURN. You do inquire how many are going?

Mr. SKINNER. Yes; particularly if there is excess baggage. If there is more than 150 pounds, the baggage man says, "How many passengers have you?" We take their word for it. We have got to take their word for it.

The CHAIRMAN. Why does a traveler pay any excess baggage?

Mr. SKINNER. This bill says we must take samples of merchandise as baggage. As I have already told you, we honor as many tickets as are presented in connection with one lot of personal baggage; but when we come to samples of merchandise, we say we will check free 150 pounds of samples of merchandise.

The CHAIRMAN. But how do you know what it is? You said if I presented you a mileage ticket and told you I had ten passengers to go, you would check me ten trunks?

Mr. SKINNER. I say that is the abuse that would come up under this bill.

The CHAIRMAN. I understood you to say that that is what you do now.

Mr. SKINNER. No; you misunderstood me, Mr. Chairman. I said that that is the abuse that would come up under this bill if it became a law; that a man could present as many tickets as he could find around the house, and say "These will cancel my excess."

The CHAIRMAN. But he would have to buy the tickets first?

Mr. SKINNER. No, I beg to differ with the chairman, they do not have to, and they have not had to buy them.

The CHAIRMAN. I would like to find that place where they do not have to buy tickets.

Mr. SKINNER. It would perhaps surprise the chairman if I should say that in certain instances of the kind on the New York Central it has been known that a man has called out in the waiting room, "Anybody going to such a place without baggage?" He wanted to borrow their tickets.

The CHAIRMAN. That is another proposition. That has not anything to do with this.

Mr. SKINNER. That is what I am coming to. This law says that we must carry samples of merchandise as baggage. Under our present regulations we allow but one ticket for samples of merchandise, unless the man says, "This man is my helper," or "a member of the firm," or he has his wife with him and some of her goods are packed in one of those trunks. We limit it to those people in order to stop this abuse.

The CHAIRMAN. You have a different system from that of the Michigan Central?

Mr. SKINNER. No; our rule is just the same.

The CHAIRMAN. The gentleman from the Michigan Central testified that they made no such inquiry about such a thing.

Mr. SKINNER. No; our rule is just the same. We recognize samples of merchandise, and we transport 150 pounds, and the limit of value is \$100, unless a greater value is stipulated at the time of checking. That is our rule.

Mr. RICHARDSON. I know people are required to sign these mileage tickets, to put their names on them, and I can not understand how others can be allowed to use those tickets.

Mr. BARTLETT. That is the rule on the Southern road.

Mr. RICHARDSON. Your rule must be different from that.

Mr. SKINNER. Our mileage book is a very liberal one. There are absolutely no restrictions or exceptions on it, except that it expires one year from the date of sale.

Mr. RICHARDSON. It is possible to practice that fraud on you?

Mr. SKINNER. It is possible, under the mileage book. It is possible under this bill. Traveling 100 miles, there are a lot of people who travel that distance without baggage, and how easy it is for anybody out of good fellowship to lend the other fellow a ticket on which to carry his baggage.

The CHAIRMAN. That would apply on personal baggage. I might try that sometime. [Laughter.]

Mr. SKINNER. It is undoubtedly done on personal baggage. We do not restrict that. We maintain that it is a free shipment, and we claim that although we voluntarily carry this on our passenger trains, we should be allowed to restrict, or circumscribe it by such instructions as we think will meet the conditions. We do not put out unreasonable restrictions. That is not the point. We do not want to be compelled to carry samples of merchandise as baggage.

The CHAIRMAN. Let me see; your excess baggage rates are about the same as the express rates on your line, are they not?

Mr. SKINNER. Yes; I guess they are a little higher.

The CHAIRMAN. Do you think there would be any great abuse of people using this law if enacted, for the purpose of carrying goods by baggage when they could carry the goods by express on the same trains and receive much better treatment of the goods?

Mr. SKINNER. I have tried to explain, Mr. Chairman, that under this bill it would be possible to ship the same amount of freight as baggage, without paying anything.

The CHAIRMAN. I know you have tried to explain that. Now I want to get at the other proposition. You and the gentleman from the Pennsylvania road seem to have a fear that people would abuse this law for the purpose of shipping goods, in order to make a sale of

them, by baggage in place of by freight. Do you think that people would use this law and pay excess baggage for the shipment of goods where they could ship the same goods by express on the same train for less money, with the goods much better taken care of, and with greater responsibility?

Mr. SKINNER. Why, yes.

Mr. BARTLETT. They get 150 pounds free.

The CHAIRMAN. They get 150 pounds free on the baggage now.

Mr. SKINNER. That is not the point I wanted to make. You know you can get almost an indefinite amount, in value, into 150 pounds, in certain samples. Can you imagine what 150 pounds of neckties would amount to, or 150 pounds of jewelry? Items of that character they do not put in excess. They could carry that along and sell it to the trade.

The CHAIRMAN. They can carry that now. This law will not change that one iota.

Mr. SKINNER. Yes; but every once in a while we catch them now, and stop them, as it stands at present.

The CHAIRMAN. You stop them from carrying goods as baggage?

Mr. SKINNER. We bring to their attention the fact that they are violating the law of New York State.

The CHAIRMAN. Give us a case where you have ever brought it to the attention of anyone in this way. I mean, I want simply to get a concrete case.

Mr. SKINNER. Well, there was a shipment of goods being made, interchanged between Troy and Syracuse. We went to them. Then there was a shipment of goods being interchanged between Fulton and Gloversville. We went to them. There was a shipment of goods from Gloversville to Burlington, and we went to those people.

The CHAIRMAN. That is the case you cited a while ago where the people were carrying goods as baggage; but that is not a case of excess baggage at all.

Mr. SKINNER. But it would be excess baggage if they would check it the way they ought to check it.

The CHAIRMAN. Yes; but this law would not affect that in any respect. It would be excess baggage if they checked it the way they ought to check it, but they do not check it that way.

Mr. SKINNER. This law does not apply only to the excess baggage. It says only excess baggage shall be carried on the same plane. It speaks of samples of merchandise.

The CHAIRMAN. Very well.

Mr. KENNEDY. This law, if passed, will not legalize the things you have been explaining, or authorize them, will it?

Mr. SKINNER. I would so interpret it, and it has been so interpreted for me by our law department.

Mr. KENNEDY. A passenger with a mileage ticket making the false declaration that he had a half a dozen people going with him when he did not, and getting a whole lot of trunks checked on that basis—we are not legalizing anything of that kind if we pass this bill?

Mr. SKINNER. Well, you understand that the ticket is the token by which we figure on a given lot of baggage.

Mr. KENNEDY. Yes; but the mileage ticket is not a token that he is going to have six people with him.

Mr. SKINNER. Yes; but on these long hauls it is as easy to get a local car ticket as it is to get mileage.

Mr. BARTLETT. Is it not a fact that if I buy a mileage ticket from here to New York and I have two passengers and I carry down the trunks to be checked and they ask me how many passengers, and I say two, and they then take the punch and punch out "B. C.," that means "baggage checked" for the 225 miles for the two people from here to New York?

Mr. SKINNER. Yes; that would be on our book, between here and New York, and they would take the mileage off for 225 miles.

Mr. BARTLETT. So that when he takes that mileage out of that book that the Pennsylvania road uses, there is evidence when that is presented to the conductor that there are two persons who have baggage checked upon that mileage book, clear through to New York?

Mr. SKINNER. Certainly.

Mr. KNOWLAND. Would you have any fear under this bill that others outside of commercial travelers would take advantage of it? In other words, how would you determine that that man was a commercial traveler? Would you have any identification?

Mr. SKINNER. There is no way we could determine it. He presents his trunks, and the assumption is from the exterior that he is a commercial traveler.

Mr. STAFFORD. In the case of commercial travelers who carry a large number of trunks, their trunks are generally of one uniform type, and by the outward appearance you can tell whether they are personal baggage or belong to one firm? They are generally initialed or have some other characteristic feature, so that this abuse is not so pressing as you are attempting to make it?

Mr. SKINNER. I wish I could make myself clear that as it is now we do control this. That is the way we realize that there is only one passenger with this lot of baggage, as you have just said; it is all marked, and we know that it all belongs to one firm. It is customary frequently for the commercial traveler in a case of that kind to have a helper for the packing and unpacking and repacking of these trunks. We recognize that, and we say, "We will let you have 150 pounds additional for your packer's ticket;" but he can not come to us as a man with a lot of personal baggage can, or send the porter of the hotel down with five or ten tickets. All our rules will apply to samples of merchandise.

Mr. STAFFORD. This bill does not say that it will be baggage for persons who do not travel. You have the same protection as you have to-day, if they attempt any such fraud upon the company.

Mr. SKINNER. It would not be of any use for our baggageman to say, "Where are they?" He would simply say, "I have sent them ahead." What good would it do us? He would say, "They have gone ahead to arrange the tables in the next hotel," and stories of that sort. In the last analysis, you have got to accept his word.

The CHAIRMAN. I can not quite understand yet how it pays a man to buy tickets and throw them away for the purpose of getting excess baggage when the charge for excess baggage is less than the cost of the tickets.

Mr. SKINNER. The ticket is salable after it has been honored for the checking of baggage.

The CHAIRMAN. Not many of them are salable for any length of time. You do not sell many of them.

Mr. SKINNER. I know; but the commercial traveler is making short jumps between town and town, and there is a great travel between the towns where he is traveling, and it is easy to sell those tickets.

Mr. RICHARDSON. The only thing that it appears to me could embarrass you if this bill was passed and became a law is this situation: Suppose that the excess baggage is presented in such an amount as to overtax your capacity to haul it. You haul it now if they pay the excess baggage on it.

Mr. SKINNER. We do, at the convenience of the company.

Mr. RICHARDSON. It is convenient if you have room in your baggage cars to haul it, is it not?

Mr. SKINNER. Yes.

Mr. RICHARDSON. So that you never refuse to haul it?

Mr. SKINNER. No, sir; only in those instances that I cited.

Mr. RICHARDSON. Now, in the event that we should pass this law so that you would not be expected to, so as to make the other baggage the preferred baggage, and require you only to haul this where your accommodations would permit, you could not be prejudiced in any way by the passage of this bill, could you?

Mr. SKINNER. Yes, sir; under the language in which it is now written. For instance, section 2 begins:

Sec. 2. That the samples, goods, wares, appliances, and catalogues of commercial travelers or their employers—

which would mean every merchant who had a commercial traveler—

and used by them for the purpose of transacting their business and carried with them solely for that purpose.

I do not know that it is the intention of that law to take care of a man who is selling from his trunks, but there is a good deal of that done, and when we find it we try to stop it. We go to the house, if it is a representative house, and call their attention to the violation of the law. The competition is not fair with a man who is doing his work legitimately and is selling goods properly, the competition is not fair with that commercial traveler who is traveling and selling from samples and sending his goods by freight and paying the freight charges, as against the man who is delivering from his trunk.

Mr. KENNEDY. One thing is certain, you ought either to carry for everybody this class of goods as baggage or you ought to carry for no one this class of goods as baggage. You ought to treat everyone alike.

Mr. SKINNER. We do. In other words, our rule undertakes to handle "samples of merchandise." The meaning of that is that they are not salable articles; that they are taken along for the purpose of making sales of similar articles, but they are not merchandise to be sold to the parties upon whom the travelers call. It may seem to your committee that there are no abuses under that rule, but I want to assure you that there are. As far as we are concerned, we do not see any necessity for a bill of this kind. As I say, we feel that we are dealing with the legitimate commercial travelers on the proper basis. We have had no protests from them.

Mr. KENNEDY. It is a fact, is it not, that in a well-filled passenger train, if each passenger had 150 pounds of baggage, you have not any baggage car to send along with the train that would hold it?

Mr. SKINNER. No, sir; that is another point.

Mr. KENNEDY. If each passenger had 150 pounds of baggage on a well-filled passenger train, about how many cars would it fill?

Mr. SKINNER. We can carry 300 pieces of baggage as they run (valises and trunks) in a 60-foot baggage car.

Mr. KENNEDY. How many pounds would they ordinarily weigh?

Mr. SKINNER. I would not want to say. I think the capacity of those cars is about 40,000 pounds.

Mr. KENNEDY. Do trunks ordinarily weigh 150 pounds when filled?

Mr. SKINNER. Well, yes; the average trunk runs from 100 to 150 pounds.

Mr. KENNEDY. It occurred to me that the passage of this bill might embarrass the railroads by compelling them to take a great lot of baggage from one passenger, so that they could not accommodate other passengers.

Mr. SKINNER. I think that is a point that should be dwelt on.

In the first part of the second page of the bill it uses the words, "shall receive and transport with each passenger," and in several places it is reiterated that the excess baggage shall also be carried "with the passenger." Now, the word "with" is bad. We do not guarantee to carry baggage with the passenger, and never have—not even the ordinary baggage. We do say we will get it on the train, if possible; but it is not always practicable nor desirable to do it. That is for the reason, as has already been stated, that those who are carrying baggage are in the minority, and it would be unfair to the majority to discommode the operation of the train by taking care of the few people who have baggage.

When you get right back to the basic principle of carrying baggage in this country, this statement will appeal to you. Those who do not carry baggage pay for the carrying of the baggage of those who do have baggage. Now, the commercial traveler always has baggage. It naturally follows that he as a class gets more for his transportation than the other people who usually travel without baggage, or carry dress-suit cases with them.

Mr. RICHARDSON. And the commercial traveler constitutes a very small proportion of the total?

Mr. SKINNER. He constitutes a very small proportion of the total travelers, and yet he is always getting this 150 pounds allowance on his ticket. It does not need any argument to demonstrate that a man is getting a little more than his money's worth when, for ten cents, he is carried from Troy to Albany, and in addition 150 pounds of freight is carried for him. It surely does not require any argument to demonstrate that fact.

The CHAIRMAN. That same argument would apply if you carried the baggage by freight?

Mr. RICHARDSON. If you had 100 men on a train that wanted to make a certain connection, and it was likely to be obstructed or delayed by being overloaded with baggage, it would be more important to those passengers to make that connection than it would for a freight train to do so, would it not?



Mr. SKINNER. It would, sir. On the New York Central we have trains which run from New York to Chicago in eighteen hours. It would be unfair to say to the New York Central Railroad, "You shall carry on that train 20 or 30 trunks belonging to one man," with the result of either shutting out other people who have personal baggage and want to make connections at Chicago with their baggage, or making it necessary to put on an extra baggage car to handle the baggage that is presented. If the latter were done it would have the natural result of cutting that train in two, because there was an extra car on it, and making us run a section of the train. Oftentimes the addition of another car does create a section on those fast trains, because they can only haul a limited number of cars and make their time.

It is those things that we want to control. That is one of the items we want to handle—samples of merchandise—at the convenience of the company. We generally get the baggage on the same train, and we are doing it on the "Twentieth Century," the eighteen-hour train to Chicago. But we do not want to be told: "You must get it on that train." We do not think it is for the best interests of all the people to do it.

Mr. RICHARDSON. In other words, you want to be allowed a little discretion as to how you are going to run your business?

Mr. SKINNER. That is the idea.

The CHAIRMAN. Is that all?

Mr. SKINNER. Yes, Mr. Chairman; if you will pardon me just a minute.

I understand from the remarks that have preceded mine that we are only speaking of this first bill, No. 1491; but I assume—it naturally follows—that this second bill, No. 16019, is still before the committee.

The CHAIRMAN. It is; and the committee will use its own judgment about considering the bills.

Mr. RICHARDSON. That is pretty much the same bill as the one you have been discussing.

Mr. SKINNER. Except that it contains a very radical departure, in that it mentions the rates at which the baggage shall be carried. We just want to point out the fact that there is a discriminating and preferential tariff provided, according to the interpretation or the wording of the bill, for sample baggage only. It does not say that personal baggage shall have that same privilege.

The CHAIRMAN. That is easy of amendment.

Mr. RICHARDSON. That would give it a preferential rate.

The CHAIRMAN. What are the rates you now charge for the carrying of excess baggage?

Mr. SKINNER. The rate amounts to about one-sixth of the passenger fare.

The CHAIRMAN. About one-sixth?

Mr. SKINNER. Roughly speaking; yes, sir—16½ per cent.

Mr. STAFFORD. What determines the charge for excess baggage in your rates?

Mr. SKINNER. The excess baggage rates are based on the passenger fare.

Mr. STAFFORD. You simply have an arbitrary percentage of charge based upon the passenger fare?

Mr. SKINNER. Yes; with a minimum rate of 15 cents.

The CHAIRMAN. What is the rate? What is the basis?

Mr. SKINNER. Sixteen and two-thirds per cent. That figures out about one-sixth of the passenger fare, adding enough to make the allowance end in "0" or "5."

The CHAIRMAN. Is that the rule all over the country?

Mr. SKINNER. That is the general rule throughout the United States; yes, sir.

The CHAIRMAN. Sixteen and two-thirds per cent, adding enough to make it end in "5?"

Mr. SKINNER. Yes, sir. There are certain sections of the country where, on short hauls, they carry a higher percentage, with good reason—that with the short haul the same energy——

The CHAIRMAN. Well, what is the rule?

Mr. SKINNER. The general rule is 16 $\frac{2}{3}$  per cent.

The CHAIRMAN. I understand; but on the short haul what is the rule?

Mr. SKINNER. That is our rule—16 $\frac{2}{3}$  per cent, with a minimum of 15 cents. But in New England territory——

The CHAIRMAN. But I am trying to find out, if you have a rule, how you get a minimum.

Mr. SKINNER. We put it in under the rule. It is a minimum rate of 15 cents, and a minimum——

The CHAIRMAN. Oh, 15 cents?

Mr. SKINNER. Fifteen cents; yes.

The CHAIRMAN. I thought it was 15 cents a hundred.

Mr. SKINNER. Oh, no; 15 cents a hundred is the minimum rate and 25 cents the minimum charge.

The CHAIRMAN. You say the rate is higher in some cases?

Mr. SKINNER. On the short hauls; yes, sir.

The CHAIRMAN. What is the rate there?

Mr. SKINNER. It is an arbitrary establishment of rates. It was begun away back of my time, and I would not undertake to say how those rates were based.

The CHAIRMAN. It is only between specific points, is it?

Mr. SKINNER. No; it is not between specific points. The tariff is worded just as all tariffs are—that where the passenger fare is so much (for instance, we will say, a dollar) the excess-baggage rate will be so much. That is the way all our tariffs read. So if the baggage is sent between any two points where the fare is a dollar, that is the tariff that applies.

The CHAIRMAN. Is there any way in which we can ascertain what the rate is that you charge for excess baggage?

Mr. SKINNER. Yes, sir. Speaking for the New York Central Railroad, I will say that it is 16 $\frac{2}{3}$  per cent of the passenger fare, with a minimum rate of 15 cents per hundred.

The CHAIRMAN. Yes, I know; but you have just told us that in some cases you charge more than 16 $\frac{2}{3}$  per cent.

Mr. SKINNER. No; you asked me if it was uniform throughout the country, and I was trying to explain to the chairman that there were certain sections of the country——

The CHAIRMAN. Not on your line?

Mr. SKINNER. Not on our line.

The CHAIRMAN. Oh, well, that is another proposition.

Mr. SKINNER. We think that the minimum rate of 15 cents should be insisted upon. I do not think that requires demonstration—that we are entitled to a minimum; and that it is ridiculous to ask a railroad company to carry freight at 1 cent a hundred pounds, as would be possible under section 4 of this bill.

Mr. BARTLETT. What are the express rates?

Mr. SKINNER. The express rates?

Mr. BARTLETT. Yes; one witness said—

Mr. SKINNER. I do not know what the express rates are.

Mr. BARTLETT. One witness said that the excess rate was generally the same as the express rate.

Mr. SKINNER. They have no association, as I understand it.

Mr. BARTLETT. I understood one witness to say that in the case of excess baggage you charged about the same for the excess as the express rate.

Mr. DERING. Will you allow me to answer that question? I think we can clear it up a trifle. On the short hauls, the minimum first-class express rate is usually 40 cents. Our minimum is 15 cents. It is only on the short haul where these people undertake to ship freight as excess baggage instead of as express.

The CHAIRMAN. Are you sure the express minimum is 40 cents?

Mr. DERING. It is somewhere in that vicinity, I think.

Mr. KENNEDY. Forty cents a hundred pounds?

The CHAIRMAN. No; the minimum charge.

Mr. DERING. On first-class matter I think it is 40 cents.

Mr. BARTLETT. Forty cents a hundred?

Mr. DERING. Forty cents a hundred.

The CHAIRMAN. If it is a minimum, it does not make any difference.

Mr. DERING. On the long hauls their rates are less than ours.

Mr. SKINNER. It has been a well-recognized principle of transportation that there should be a minimum rate, and then the basis follows when you reach the point where the minimum does not get in its effect. In other words, where the fare is 95 cents, under that 16½ per cent tariff, up to the fare of 95 cents the rate would be 15 cents a hundred. Beyond that it goes on at 16½ per cent of the tariff.

Now, I should like to call attention to this section 4, which to us is incomprehensible, and we believe it is impracticable of application. I have tried to have it interpreted for me. I can not do it myself, and I have not found anybody who could demonstrate just how, under that regulation, we would adjust a claim for loss of samples of merchandise. I want to say here that we do pay our claims for loss of samples of merchandise, and I should like to know how we would have to adjust them. There is a penalty that goes with this bill.

The CHAIRMAN. There does not seem to me to be any difficulty about it. It would not apply except when the baggage rate was less than the freight rate. Whether it ever is less or not, I do not know. It never has been in my case. But if it were less than the freight rate, then the value of the goods would be taken on the basis of the freight rate, and you would have it. The amount paid for excess baggage would be to the freight rate as the amount that you are to pay is as to the actual value of the goods. It is a simple mathematical proposition.

Mr. SKINNER. But what would we do in cases where there are no freight rates for those goods?

The CHAIRMAN. This does not apply, then.

Mr. SKINNER. Well, that is what I say; it is impracticable.

The CHAIRMAN. It is not impracticable at all. There is no case where there is not a freight rate on goods. You can not find a place in the United States where a man can not send goods by freight over a railroad.

Mr. SKINNER. No; but there are articles that are carried as samples that are never carried as freight.

The CHAIRMAN. I guess they are all listed in the classification.

Mr. SKINNER. Of course, I do not like to dispute that statement.

The CHAIRMAN. They could be listed very easily, at any rate. That is your business. If there is something that you have not classified, the railroads ought to classify it; that is all.

Mr. KENNEDY. I confess that I do not understand the section.

Mr. SKINNER. The great point we would like to make, Mr. Chairman, is that there is no necessity for the legislation. We have never had any complaint from the commercial travelers that there was any necessity for such legislation; and we can not see the object in passing a law when it is not necessary. We do not quite see the necessity for it.

Mr. STAFFORD. On your lines, when loss arises of the excess baggage of commercial travelers, what rule is followed in reimbursing the mercantile establishment owning it?

Mr. SKINNER. We follow the same rule that we do in the case of personal baggage. In New York State there is a law (the public-service-commission act) which enables us to make a charge for any baggage exceeding 150 pounds in weight or \$150 in value, checked or carried on one ticket.

Mr. STAFFORD. Where the public-service regulation does not apply, outside of the State of New York, what rule is followed as to allowances for loss of excess baggage of commercial travelers?

Mr. SKINNER. Of course our tariff on that portion of the road reads, as I stated a little while ago, "150 pounds of samples of merchandise not exceeding \$100 in value will be carried free, unless a greater value is declared at time of checking, and charges paid thereon." In other words, we give the commercial traveler—

Mr. STAFFORD. You have not answered my question as to what reimbursement you allow for excess baggage over 150 pounds.

Mr. SKINNER. We make no difference as between whether it is excess or regular baggage, if he does not declare an excess valuation. Of course we do not ask him how much his baggage is worth; but if he does not declare an excess valuation, we attempt to stand on our limit of liability of \$100.

Mr. STAFFORD. Regardless of the weight, then, whether it is more than 150 pounds or not, if he does not declare on a higher valuation you limit him to that amount in recovery?

Mr. SKINNER. Well, yes; unless he declares a greater value at the time he checks it. We do that for this reason: In their character and the use to which they are put, samples of merchandise are essentially different from the ordinary wearing apparel carried by the ordinary traveller. The samples may be of little value, or they may be

of very great value. They may be spread out in a great many trunks and be of small value, or they may be condensed into one little trunk and be of untold value—such as jewelry sample trunks, containing \$25,000 or \$30,000 worth in one little trunk.

Mr. STAFFORD. What is the rule of the commercial travelers as to declarations where the value of their samples is in excess of \$150?

Mr. BARTLETT. One hundred dollars.

Mr. SKINNER. They do not usually declare. We find that very few people declare, even on personal baggage. They are willing to assume that risk themselves. The fact of the matter is that there are very few losses in the baggage service in this country. In comparison with the quantity of baggage handled the losses are so insignificant that they should hardly be a factor in considering the proposition.

Mr. KENNEDY. If the traveler declares a greater value, how does that affect your rate?

Mr. SKINNER. We make a special charge for any value in excess of \$150 in New York State, and that is based on one-half of the excess baggage tariff per \$100. In other words, if the rate was \$1 a hundred for excess baggage, he would pay 50 cents for \$100 of excess valuation.

Mr. KENNEDY. One-half as much?

Mr. SKINNER. One-half as much for each \$100 as he would pay for the hundred pounds.

Mr. KENNEDY. Is that an arbitrary rule of your company, or is it provided for by the New York law?

Mr. SKINNER. The rule regarding samples of merchandise is in effect on almost all the New York Central lines, I think. All of them have their tariffs to that effect. But in New York State the law provides that we shall take baggage of any character, and that we may make a charge for any baggage in excess of 150 pounds or of the value of \$150. That is the public-service commission act.

Mr. KENNEDY. How long has that been effective?

Mr. SKINNER. That has been in effect three years, I think. I would not want to say positively.

Mr. KENNEDY. That must explain some of the decisions to which our attention has been called here this forenoon, I think.

Mr. SKINNER. I would not want to say as to that.

Mr. STAFFORD. Is the practice general throughout the country of compelling the commercial travelers to declare for excess valuation above that allowed by the railroads if they wish to recover for any amount above the stated amount?

Mr. SKINNER. It is general on the New York Central lines. I do not know what the practice is on some of the other lines. We maintain that that is an equitable proposition—that the man who carries 150 pounds of baggage, worth \$25,000, when he does not declare the value, is not entitled to any greater service than the man who has 150 pounds of baggage that is valued at \$50. Of course, the man with \$25,000 worth of property is certainly getting more for his money than the man who has \$50 worth of stuff.

Mr. STAFFORD. In other words, you mean that the insurer's liability of the railroad should not extend to a higher valuation unless the railroad is compensated for the extra liability?

Mr. SKINNER. Unless there is a special agreement to that effect.

**STATEMENT OF MR. S. H. HARDWICK, PASSENGER TRAFFIC  
MANAGER OF THE SOUTHERN RAILWAY COMPANY.**

Mr. HARDWICK. Mr. Chairman and gentlemen: With your timely permission and indulgence I shall be very glad to present what I have to say as briefly as possible, and to make it as coherent and as understandable to the committee as I may be able. I shall be very glad if I may have the privilege of making my presentation continuously; and then, after the close of it (and I promise you I shall be quite brief), I shall be very glad to answer any questions the committee may care to propose.

With that statement as a preface, I should like to say that, of course, we can only deal with the questions which are presented to us; that is to say, we can only consider the exact language of the bill or bills.

I may say that after having had an experience of about thirty-six or thirty-seven years in the passenger traffic, largely with the company which I now have the honor to represent, I have not had before me at any time any question of this kind as a practical proposition from anyone making any criticism of our baggage regulations, classification, or charges, nor have I known of such a request being presented to any of the traffic associations of which our line is a member. The first I have heard of this has come through certain commercial organizations, and the second as an expression before this committee in the bills now under consideration.

Bill No. 1491 says, on page 2, lines 1 and 2:

Shall receive and transport with each passenger tendering the same the baggage, including the sample baggage, of such passenger, etc.

Then, at the end of line 6:

All baggage, including sample baggage, as defined by this act, in excess of the weights herein specified, is declared to be excess baggage, and such carriers are required while so engaged to carry such excess baggage with the passenger.

I desire to emphasize the point which has been made here (because it is one that concerns the whole people of the United States, touching as it does the vital question of transportation). What shall become of all of the commerce and all the travelers of the country if they shall be submerged by a certain class or certain kind of transportation or travelers? All trains provide baggage cars of such capacity as to carry what the experience of the carriers has led them to understand is necessary. If a train carries 125 passengers, it has a baggage car of appropriate capacity. If it carries 50 passengers, it has a corresponding baggage capacity, and so forth. So, after all, in the final analysis the question of the carriage of baggage must rest in the intelligent discrimination of the carriers, provided, of course, the transportation of the country is to be undisturbed and unblocked by any such measures as are sought to be passed in these bills.

If we shall carry these articles for the commercial traveler and his employer—though I assume it is not within the bounds of reason to suppose that the committee will present a bill to the Congress which will have that kind of classification and restriction—we must, then, carry exactly the same articles for the farmer, and for the laborer, and for the artisan, and for the professional man. And what shall these items consist of? It is not merely the commerce of the country that is threatened in these measures; it is not merely the transportation

of passengers that is to be impeded; but there is sought to be put upon the carriers the enormous expense of taking the most delicate articles of mechanism of all kinds, or else we come back to the original proposition of class legislation.

As the distinguished attorney for these gentlemen has said, there is no quarrel between the commercial travelers and the carriers. He may well say that, and so may all those back of him. We have gone along in partnership hand in hand up to this time, and it is as a result of that cooperation that the country and its commerce have reached their present splendid state. I have not had before me a single practical criticism or request in this connection; but we find it sought to be crystallized into legislation. Our objection to the measure is largely of that kind.

The bill says in section two:

That the samples, goods, wares, appliances, and catalogues of commercial travelers or their employers.

"Their employers," if you please, gentlemen. Not "other employers," but the employers of commercial travelers. And why? What shall become of the man who wants to carry these goods and appliances, catalogues, etc., if he is not an employer of commercial travelers, or is not himself a commercial traveler? The bill is adroitly worded.

And used by them for the purpose of transacting their business.

Not the business of anyone else; not the concern of anyone else; not the profit of anyone else; not the convenience of anyone else; not the expedition of anyone else; but for their business.

And carried with them solely for that purpose.

Gentlemen, we respectfully ask, How on earth can a carrier determine that these gentlemen are carrying this baggage solely for that purpose? And why "solely?" The word is well chosen. It can not deceive the representative of the carrier. "Solely for that purpose." It means, as these gentlemen have stated before me, an opportunity to invade the commerce and the trading of the cross-roads man, the small retail man, and the other men who are your constituents as well. It is needless to say, "this may not be done," or to ask us analytically if we know that it is done. There is the opportunity; there is the invitation; and as intelligent men you know what must be the result.

House bill 1491, section 1, requires that carriers shall receive and transport with each passenger tendering the same the baggage, including the sample baggage of such passenger, not exceeding 150 pounds for an adult, etc.

Section 2 gives the definition that the samples, goods, wares, appliances, and catalogues of commercial travelers or their employers and used by them for the purpose of transacting their business and carried with them solely for that purpose, when securely packed and locked in substantial trunks or sample cases of convenient shape and weight for handling, are hereby declared to be sample baggage within the meaning of this act, and such carriers are required to transport the same with the passenger as required by this act.

This second section is the purpose and meaning of this legislation—that is, that commercial travelers and their employers shall be

created as a special class, the specific and exclusive beneficiaries of the act. This same class legislation is again set out specifically in section 4 of the bill.

It is our opinion that the decision of the Supreme Court of the United States in the Michigan Mileage case has an important bearing upon this baggage bill, and that the same principle laid down in that case will govern in the baggage case, and this baggage bill if it ever passes will be held to be unconstitutional. The bill itself is extremely objectionable. It not only seeks to make class legislation in favor of passengers carrying merchandise as baggage, but specifies that the samples, goods, wares, appliances, and catalogues of commercial travelers or their employers are required to be transported as baggage, thus setting commercial travelers and their employers in a class by themselves. Furthermore, the bill does not classify what may be sample baggage, but apparently includes everything carried by this specific class of passengers, including all kinds of fragile articles, glassware, china ware, mirrors, pictures, etc., articles of delicate mechanism, such as typewriters, cash registers, etc.

No limit is set as to the amount of excess baggage which shall thus be carried. No requirement is made that the specific class of passengers shall adhere to any specifications of the bill, although section 3 specifies that it shall be a misdemeanor, and upon conviction a fine of not less than \$25 nor more than \$100 shall be assessed against any common carrier violating any provision of the act. No penalty is provided for violation except by the carrier—no penalty against a passenger.

No valuation is set as a limit for the amount of the claims of the passengers having such baggage damaged, lost, or stolen.

An example of the class discrimination would be found in a case where, say, a certain hardware merchant doing business on one side of the street, and being employer of commercial travelers, could within the specifications of this act have his baggage defined to include samples, tools, catalogues, etc., whereas his competitor across the street, who was not employer of commercial travelers, could not within the specifications of this act carry his baggage, similar samples, tools, catalogues, etc., the distinction being that in one case one man is an employer of commercial travelers and in the other case he desires to build up a business, and although not yet an employer of commercial travelers, could not have the same privileges accorded to him on that account. The railroads have never sought to make any such discrimination.

Again, a commercial traveler could carry samples of medicine, chemicals, surgical apparatus, etc., by reason of his being a commercial traveler, whereas a professional man, such as a physician or surgeon, would not be able within the specifications of this act to carry similar medicines, chemicals, surgical apparatus, etc., as baggage.

The only safe and reasonable way, it seems to us, is to let this matter of baggage definition alone, or else find the definition to an exact meaning of the word baggage, and not seek to amplify and to diversify this definition in favor of certain class or classes.

Samples, goods, wares, appliances, catalogues, etc., might, as we have previously pointed out, mean musical instruments, articles of delicate mechanism and of great cost, typewriters, sewing machines, cash registers, mirrors, cut glass, fine china, chemicals, and a thou-



sand and one innumerable articles of delicate and difficult character and of immense cost, all such as might be claimed to be immensely valuable. All of these, and indeed samples, goods, wares, appliances, etc., of every kind are permissible under the original bill.

Who is to determine who are commercial travelers or their employers, who may offer such articles to be checked as baggage?

How will it be determined that commercial travelers do not offer for sale or make delivery of such samples, etc., or if they do make such sale or delivery, what is the penalty under the law proposed?

How will commercial travelers and their employers be distinguished from any other passenger?

Will it be for the carriers to determine this classification of its passengers?

Mr. Chairman and gentlemen, we have no quarrel with the commercial travelers of the country. We stand here just as nearly as we can with the commercial travelers of the country. But I submit to you, respectfully, that it is one of the greatest mistakes of the commercial travelers (and, strange to say, in my opinion it is the outgrowth of the organization of the commercial travelers) that they consider themselves in some way to be separated from all the balance of the public. They think that privileges may be granted to them in some way by the legislatures or by Congress or by the carriers that will set them aside and make them different from other passengers. The railroad companies do not know how that can be done.

Therefore, we say to our friends, the commercial travelers and their employers, who are the wholesale men of this country, "We can not do this for you. We can not do for you anything different from what we do for the smallest one of our patrons, relatively speaking." If there is a merchant engaged in a small town of 200 people in the State of Georgia, we want that man to have all of the protection that the largest commercial house in New York or Chicago or Boston or St. Louis or anywhere else has. We do not care whether he is a commercial traveler or whether he is an employer of commercial travelers. It never has entered into our minds to ask any such question.

I read from the preamble to the constitution and by-laws of one of the most important organizations of commercial travelers:

For the purpose of furthering the interests of commercial travelers by giving them better hotel and railroad accommodations, cheaper rates of travel, and greater allowance of baggage, we, a portion of the commercial travelers, fraternally bind ourselves, etc.

I now read from the chairman's report of the same organization; and I may say before doing so—and I say it without any unkindness and without any kind of hostile criticism—that I do not blame any body of men for organizing and pushing their own interests in an intelligent way. But we do argue and submit that they ought not to ask, either of the carriers or of the Congress, anything which shall hurt the whole body of people. It has been shown to you, as I said in the beginning, that all the carriers arrange what their experience has led them to determine to be adequate capacity for the reception and conduct of the baggage that may be offered. In my home town of Montgomery, Ala., I happen to know of one firm which has seven travelers. Those travelers go out on Monday

morning and carry 10 trunks each. There are 10 trunks, 70 pieces of baggage, from one firm. I have had it reported to me that on one occasion there were on one of our fast limited trains—No. 37—out of Washington (with which Judge Bartlett and Judge Adamson are acquainted) as many as 36 pieces of baggage offered by one drummer. The capacity of that train was only 85 pieces, and we carry on it 150 passengers. What shall become of the other part of the public?

Now, all along—and allow me to emphasize and repeat that—there is no quarrel between us. These gentlemen have said so in the hearing. There is no ground for it. We have gone to the limit of indulgence; and until there shall appear a quarrel, or a necessity for the legislation, why pass it?

They say it is anticipated. We have been in business since the first railroad was operated, long before the commercial travelers were organized. There never has been such a quarrel, and there is not now.

I am now going to quote from the gentleman who was chairman of the transportation committee of this association; and I do this with reference to the question of rates. I do not do it unkindly; it is their business, or their conception of their business; but I wish to show that they seek to present some kind of measure which shall, as I say, set them into a separate class of the great body politic of the country. The carriers have constantly tried to resist it. This is on the question of the rates, whether or not the 2-cent rate, which was then (in 1906) being agitated, was beneficial to the commercial traveler.

As representatives of the great wholesale and manufacturing interests of this country, who to-day in most cases are able to secure a better rate than that given to the general public, are we consulting our best interests when we advocate a uniformly low rate for everybody? Take the territory around St. Louis, for example: We secure through mileage at 2 cents per mile, except in the southwest, and there is a reasonable probability of our being able to secure it in that section.

I may say that has been realized.

Through our merchants' associations we are able to secure a rate of 2 cents a mile for our customers to come to market and buy their goods. Who, then, will be benefited by the change? Not the drummer or the merchant, surely, for they have that rate now; but the farmer and the artisan.

Gentlemen, actually the farmer and the artisan will be benefited by the rate, but not the commercial traveler, nor the drummer, nor the wholesale merchants of St. Louis.

It may be of advantage to our great department stores to have these people—

That is, the artisan and the farmer—

come to the great centers to buy their goods. But is it to us, the commercial travelers? Is it not a fact that our best customers are what we designate as the country merchants? And is it not a further fact that these men depend for their business upon the only class whom we propose to benefit by a reduction of the rate? If we bring John Smith's customers from Smithville to buy goods at St. Louis department stores, we are certainly cutting off the outlet for our merchandise through John Smith of Smithville. We are quick to recognize this truth when it comes to us in the guise of parcels post, which we believe will facilitate the movement of merchandise direct from the mill or the houses to the customers; but somehow we find it difficult to recognize the same principle in railroad fares.

I will refrain from reading further from this.

Mr. ADAMSON. I should like to get that gentleman's name. He is the first one I have heard of in a long time who thought about the "ultimate consumer" and the farmer. [Laughter.]

Mr. HARDWICK. Judge Adamson, unless you insist upon it I do not care to give his name.

Mr. ADAMSON. Oh, no; of course not!

Mr. HARDWICK. I do not want to have anything enter into this in the way of a controversy. I am trying to state the question fairly as I see it. I have tried to look at it in a sympathetic way from the standpoint of the other fellow. I am here to say to you gentlemen (and I have so said to our commercial friends in many of their meetings) that I do not know of anything that is more harmful to their interests than the particular piece of proposed legislation that is now presented.

Now let me say a few words on the subject of releases. I am sorry our business is of such a character that much of it is technical, so that unless some member of the committee has had some experience with it, it is somewhat difficult to tell him what we mean in the language of the tribe. But when we say "a release is given," in our part of the country, at least, we mean that if, by way of illustration, we take for a moving picture show a gas tank or any delicate apparatus as baggage, we have the shipper sign a release. He puts a valuation on it. Then he does not pretend to claim any more than that from us, or else we do not take that as baggage. That is what we mean by a release.

I think it was Judge Kennedy that asked if we carried cats and dogs as baggage. We do carry cats and dogs, and ponies, and other live animals that are in shows. We carry them, of course, properly protected and under baggage regulations. The infinite classification of baggage as already made by the carriers is so great as to include every practical and reasonable piece of baggage that is offered by the commercial traveler—so much so that I do not know that they could ask us to increase it. I do know that they have never asked us to increase it without our doing it, or else explaining to them just exactly why we could not do it; and generally that has been satisfactory. I do not know of any persistent complaints.

I am very much obliged for your attention; and I shall be glad now, if there are any questions you wish to put to me, to answer them.

Mr. ADAMSON. I should like to know what this discrimination in age has to do with it. Did you ever know of any drummer under 12 years of age?

Mr. HARDWICK. That, of course, is put in for the general public. That is the first paragraph.

I did not finish with reference to bill No. 16019, which, as I understood from the chairman, is also under consideration. The only change that we see—at least, from reading it hurriedly here; as I said, I have not gone into it very carefully—is the enlargement of section 2, beginning with line 22:

*Provided, That the maximum charge for transporting excess, etc., shall be the rate named.*

I think it has already been stated to you by all the gentlemen who appeared in advocacy of the bill that it was rather an unusual, and seemingly to their minds a dangerous, proposition to bring before this committee the question of rate making. We think that power

has already been lodged by this committee and by the Congress in general in the Interstate Commerce Commission. If the commercial travelers have any complaints to make about any excess baggage charge, of course they should take them there. I think you gentlemen would so refer them.

Section 4 of bill No. 16019 repeats the description of how losses may be adjusted. Judge Kennedy said this morning that he did not understand it. I have never heard of any railroad man who did understand it. I was entertained by the attempted explanation of our friends who are advocating the measure. Of course that explanation would be very beautiful, and it would be plain even to a railroad man if the conditions were just as stated. Commercial travelers, you know, are not confined to carrying the right shoe in one sample set and the left sample shoe in another sample set. There are commercial travelers who carry whole pieces of coats and hats and other articles which may not be separated. There are also commercial travelers and employers who have very large department stores; and those travelers carry all kinds of samples. They may carry dry goods, or notions, or jewelry, or fancy drugs, or fancy soaps, or fancy groceries, or any other thing. We are checking the baggage of men of that kind. If they were all handling simply the right-foot shoe or the left-foot shoe we could determine that matter without the aid of Congress. But when we have one man with 10 trunks or 30 trunks, and one has this and the other has that, or one has many of the same things, how will this section help us to define what is our actual liability?

I think, gentlemen, with all due respect, that the proposition in both of these bills is hardly understandable by the railroad man—at least, in the way that it reads. And if there are to be any changes, we shall be very glad to have an opportunity of considering those changes and appearing again.

Mr. ADAMSON. If you had a left shoe, and the right one was lost, the one that was lost would represent just as much loss to you as a whole pair of shoes, would it not?

Mr. HARDWICK. The left shoe, he said.

Mr. ADAMSON. Either one; if you had one, and the other one was lost?

Mr. HARDWICK. Which one is it now, Judge?

Mr. ADAMSON. I do not care which one it is. You can take your choice.

Mr. HARDWICK. I will take the right one. If I had a wooden leg, the left one would not do me any good.

Mr. ADAMSON. I say it would be just as much loss to you, though. You have not a wooden leg. If you can not answer my question about the twelve years' discrimination in age (which I can not see any applicability for in this drummers' bill), I want to ask you another question that I know you can answer. The limited train that you mentioned is very important to our part of the country.

Mr. HARDWICK. Yes, sir.

Mr. ADAMSON. A great many connecting points, you understand, depend on the schedule and connections that train makes for their mail and passengers. Many a time I have had to pay a hotel bill in Atlanta because the train did not reach the connecting point in time.

Mr. HARDWICK. That was hard luck.

Mr. ADAMSON. Now, Major, is it fair to the passengers and to the people expecting mail to allow one man to obstruct and delay that limited train along at local stations with 36 pieces of baggage when you have other freight and express trains to haul them on?

Mr. HARDWICK. Judge, I am glad you asked that question, because it is pretty nearly the whole argument. That actually did happen in the movement of that train at a place called, I think, Gaffney, S. C., in the case of a drummer going probably to Spartanburg, a distance, we will say, of 50 or 60 miles. There were 36 pieces of baggage offered by that man. What could we do? Unless you gentlemen will let those matters be conducted in the way they have been so well and so successfully conducted in the past—

Mr. BARTLETT. What did you do? Did you take it?

Mr. HARDWICK. No, sir; we could not take it.

Mr. BARTLETT. I just wanted to know.

Mr. HARDWICK. We forwarded it, of course, on the following train.

Mr. ADAMSON. Do you not run that train under penalties to the Post-Office Department in case of delay?

Mr. HARDWICK. Yes, sir. That is another question that I am sorry we have all overlooked. Congress has passed laws automatically imposing upon us penalties for failure to make mail connections.

Mr. STAFFORD. I should like to interrupt you right there to say that I believe that law has been repealed.

Mr. HARDWICK. Has it, sir?

Mr. STAFFORD. Two years ago the Committee on Post-Offices and Post Roads repealed the provision imposing penalties upon the railroads.

Mr. HARDWICK. If there is not now a penalty in the way of an actual assessment against the railroads, there is a severe penalty in public opinion, and in the interruption and delay of the commerce of the country. We are criticised every day—you know that yourself, Judge Adamson, and Judge Bartlett knows it—by the newspapers in your State for our trains being delayed.

Mr. ADAMSON. Your very object in limiting that train is to make time and to make connections?

Mr. HARDWICK. Yes, sir. We deal with the baggage question fairly and liberally and, we think, intelligently, and we respectfully ask the committee that it be left undisturbed unless some more substantial reasons can be set out than we have heard. If that is done, we would like to have an opportunity to discuss the matter again before your body.

Mr. ADAMSON. Major, I want to ask you one more question. Has there been any disposition on the part of your road or any of the railroads in our part of the country to refuse to give the drummer boys all the accommodation they want in handling their baggage?

Mr. HARDWICK. No, sir; there never has been such a case, and we challenge the production of proof that there ever was. There never has been.

Mr. ADAMSON. As you know, the drummers in our part of the country are mighty good boys. We all like them and want to do everything we can for them.

Mr. HARDWICK. That is all right. The same thing is true all over the country. I want to say that some of my very best friends are, as you say, the "drummer boys."

Mr. ADAMSON. They are the smartest part of the population of our part of the country by a long way.

Mr. HARDWICK. They certainly are.

Mr. KENNEDY. I have some good drummers in my district, and there is one thing I never could understand. After we passed the Hepburn rate bill, every time I would meet a traveling salesman he would begin to take me to task for having participated in passing that bill. He seemed to think we had done something that compelled the railroads to act toward them in an entirely different way than they ever had before. What was the occasion for that?

Mr. HARDWICK. Judge, I want to say, and I think I can say it truthfully, that the carriers did all of their fighting against the Hepburn bill before its passage; and they have all been absolutely obedient to it ever since. I was on an inspection tour of our road recently, and I stopped at an important ticket office. The man in charge of it has been in our employ there for over thirty years. He said to me:

You are getting very hard now with the ticket agents. You require us to make these statements and settlements, and if we make a mistake in selling through tickets we have to correct it—

And so forth, and so forth.

Naturally, all of that comes under the Hepburn Act. The Interstate Commerce Commission have their inspectors—and properly so—examining the books of the carriers; and they have rules that these mistakes are not to be ignored, because they might finally run into rebates and into connivances and devices which the law expressly forbids. You will find that a great many people who do not understand that a railroad company has to and does obey the law will criticise the law. I can say truthfully, again, that I do not know of any railroad man who has ever sought, in any way, shape, or form, to discredit the Hepburn bill before the public or before his employees.

The CHAIRMAN. You do not know of anyone who advocated it before it passed, do you—or any other bill that we have passed relating to the railroads, or imposing any burdens on them?

Mr. HARDWICK. I could not say about that.

Mr. BARTLETT. Mr. Samuel Spencer, the president of the Southern Railroad, appeared before this committee and made a speech in which he said that he thought the railroads ought to be regulated.

Mr. HARDWICK. Yes; I do not think you will find any trouble with the railroads on that proposition.

Mr. KENNEDY. When I go home from Washington to Youngstown, I have mileage over the Baltimore and Ohio Railroad. They will tear out mileage to Newcastle Junction, and then I have to pay cash fare up to Youngstown. If I happen to go home with not enough mileage in my book to bring me back, I can not buy an eastern mileage book in Youngstown. Do you think that is done intentionally, to annoy people, or what is the occasion of that sort of thing?

Mr. HARDWICK. No, sir; I think the intention is simply that the public shall use the reduced-rate transportation within the special conditions under which the carriers have found it possible to do that intelligently and reasonably. They can not properly separate you from anybody else, Judge, and take you from here to Youngstown (or they ought not to do so), unless they are going to make a flat rate and take the whole public there at the same rate.

Mr. KENNEDY. I think they ought to take the whole public there at the same rate.

Mr. HARDWICK. Yes, sir; that is the point. Until they get to that point, of course, they can not do the other thing. As soon as they can, the railroads have always reduced their rates automatically, just as the business would justify it.

Mr. KENNEDY. I never believed that the railroad mileage-book scheme ought to be favored at all.

Mr. HARDWICK. I am glad to hear you say that, sir.

Mr. KENNEDY. I think every man ought to have as good a rate as I get.

Mr. HARDWICK. It is the most iniquitous form of transportation.

Mr. KENNEDY. But those roads have an accounting between the auditors. It is one management right straight through.

Mr. HARDWICK. Of course you know the history of the origin of the mileage book. It was a concession to the commercial travelers; and as an outgrowth of that it came to be used by the whole public after the interstate-commerce law was passed, in 1886.

Mr. KENNEDY. A great many people have in some way been led to think that all those things were caused by the passage of the Hepburn bill. The drummers, especially, seem to think so.

Mr. HARDWICK. I do not think that is——

Mr. BARTLETT. That was like putting the blame for the panic on Hoke Smith, in Georgia.

Mr. ADAMSON. I know that for a good while some of the railroads out in the country would refuse to sell tickets and check baggage on connecting roads. Was that only temporary, until they could learn the rates?

Mr. HARDWICK. Oh, I assume so. There was naturally a great commotion caused by the changes in the intrastate tariffs; and the Interstate Commerce Commission held that we did not have to observe the literal reading of the law at once, because it was impossible to do it, as there was such confusion prevailing. But as soon as we could do it, as rapidly as possible, we showed our good faith in doing it, and we did do it.

Mr. ADAMSON. Some folks charged that you were resenting the legislation and taking the position that if the public wanted to regulate you they could take just what they got according to law, and nothing else. You were really just waiting to adjust your rates to the changed conditions?

Mr. HARDWICK. Absolutely; the commission can tell you that, sir. We were acting under their advice, and really under their guidance, all the way through.

The CHAIRMAN. Senator Faulkner, have you any other witnesses?

Mr. FAULKNER. No, Mr. Chairman. We propose to close our hearing on this question. I will have here to-morrow, if you desire it, one or two gentlemen from the western roads whose views you or some members of the committee said they would like to hear in reference to the 16-mile-an-hour bill.

The CHAIRMAN. We may not be able to hear them. We will begin right away to-morrow on the interurban and electric roads.

Mr. ADAMSON. Senator, it was suggested to some of us (and it looked a good deal that way) that those roads that were not accused

of anything were coming here and making a showing, and we want to hear the views of those that the blame was put on.

Mr. FAULKNER. I will have here to-morrow the representatives of the roads that were accused of anything, and can keep them until day after to-morrow if it is the desire of the committee to hear them.

Mr. CONBOY. Mr. Chairman, I should like the privilege of speaking for just a minute or two in answer to some of the suggestions that have been made to the committee. I shall not take up the time of the committee for more than a few minutes.

The CHAIRMAN. We have all got to be on the floor, I think.

Mr. CONBOY. If that be the case, of course I can not insist upon speaking.

The CHAIRMAN. We will hear you in the morning; or you can submit a written statement.

Mr. CONBOY. I did not intend to take more than two or three minutes at the outside.

The CHAIRMAN. We will give you three minutes. Go ahead.

#### FURTHER STATEMENT OF MR. MARTIN CONBOY.

Mr. CONBOY. Mr. Chairman, the arguments advanced by the gentlemen who have appeared in opposition to the proposed legislation are reducible to two main ones. The first—that suggested by Mr. Dering—was that the bill would involve the imposition of a rate that would be unfair to the railroads. We are not here prosecuting the proposed bill fixing the rate for the carriage of excess baggage. In connection with that, the argument was made that the opportunity to offer excess baggage would result in commercial travelers bringing tremendous amounts of freight for the purpose of having it sent as excess baggage to the persons who would ultimately purchase it. If that were done, it would be a direct violation of the provision of the law itself, which relates only to samples, goods, wares, and merchandise used by commercial travelers solely for that purpose. It has nothing at all to do with the ultimate sales that are made by the traveler, and the freight that results therefrom in connection with the delivery of the merchandise.

Mr. FAULKNER. Mr. Chairman, I should like to ask Mr. Conboy whether there is any penalty imposed upon those whom he represents in case that law is violated?

Mr. CONBOY. The railroad company could refuse to receive it just the same as they could refuse to receive it from an ordinary tourist offering merchandise as personal effects. But there is as much danger of the ordinary tourist offering great quantities of merchandise as his personal effects, to be shipped to the points where they have been sold, as that a commercial traveler would send quantities of freight in the same fashion.

Mr. FAULKNER. Why not impose a penalty for violation of the law?

Mr. CONBOY. Excess baggage is the same in both instances, whether it be personal effects or simply baggage.

This morning I suggested to you that there were cases in which the right to recover for loss of sample baggage had been determined by the courts. You asked me for one of them, Mr. Stafford. In the United States Supreme Court it was decided, in the case of Hum-



phreys v. Perry (148 U. S., 627), that a commercial traveler or his employer has no right of recovery for the loss of goods that had been shipped as baggage and were actually merchandise in the shape of samples. In passing upon that question the court, at pages 642 to 647, reviews cases from Massachusetts, New York, the House of Lords of England, the common pleas court of England, Illinois, Minnesota, and California, overruled the case of Kuter v. Michigan Central (1st Bissell), and reaffirmed the doctrine that it had laid down in the case of the Switzerland Marine Insurance Company v. Louisville, Cincinnati and Lexington Railway Company (131 U. S., 440). And the New York Central Railroad Company, which was represented here so ably this afternoon by its baggage master, was the railroad company in the case where the court of appeals of New York laid down the doctrine that I stated to you this morning. I refer to the case of Trimble v. The New York Central and Hudson River Railway Company (162 N. Y., p. 84), a case decided as late as the year 1900. There the New York Central Railroad Company had attempted to defend against the recovery of a trunk full of shoes on the ground that they were checked as baggage and were actually merchandise. It was claimed that a deception was practiced upon the railroad company, although they knew the character of the trunk as a sample trunk. They also attempted to defend upon the ground that the employer of the man had no right to recover when the contract was not made between him and the railroad, but between the employee and the railroad.

You asked me, Judge——

The CHAIRMAN. Your time is up.

Mr. CONBOY. Very well, sir.

The CHAIRMAN. I have here an extract from the annual address of Mr. Jastro, president of the American National Live Stock Association, which the stenographer may insert in the record.

(The extract above referred to is as follows:)

EXTRACT FROM ANNUAL ADDRESS OF H. A. JASTRO, PRESIDENT OF AMERICAN NATIONAL LIVE STOCK ASSOCIATION, DELIVERED AT DENVER, COLO., JANUARY 11, 1910.

In his Des Moines address and in his message to Congress President Taft indorsed the proposition that the Interstate Commerce Commission shall have the power to postpone, by order, the date effective of any new rate or classification, provided that within thirty days after such order a complaint has been filed against such rate or classification, or provided the commission has itself instituted an inquiry into the reasonableness of said rate or classification. This is substantially the proposition approved by our association at its last two annual meetings and is a very important and necessary amendment to the present interstate-commerce law. Railroads ought not to be permitted to arbitrarily advance rates which have been in effect for many years without submitting complete and satisfactory proof that said advances are reasonable. Only in this way can the burden be placed upon the railroads of proving that a rate is reasonable. At present the shippers are compelled to make the proof that the rates are unreasonable, and at the same time are obliged to pay the advanced rates, with but little, if any, likelihood of ever being able to recover that part which may ultimately be declared to be unreasonable. This amendment will meet with general indorsement throughout the country because of the many actual and threatened advances in rates. The time to decide whether a rate is reasonable is before it is put into effect, and not afterwards.

The recommendation of President Taft that the Interstate Commerce Commission be granted power to review classifications and to modify and annul any changes in regulations; to institute proceedings upon its own motion; to compel the establishment of through routes; to fix the rates for such routes, and to prescribe regulations under which

shippers shall have the privilege of designating the route over which their shipments shall be carried, are all manifestly fair, practical, and necessary amendments to the present law, and should be indorsed by this association.

It is gratifying also to note the further recommendations of the President, that no railroad shall issue any additional stock or bonds except upon the approval of the Interstate Commerce Commission, and that no railroad shall acquire stock in another competing road. Had such legislation been enacted years ago many of the evils we now complain of would not exist. However, it will prevent in future any issuance of stock representing nothing but water, and will help to preserve what little competition there is left among the railroads of the country.

There is, however, grave doubt of the wisdom of creating a special tribunal to review the orders of the Interstate Commerce Commission, and of the proposal of the President to lodge in the Department of Justice all proceedings to enforce or defend the orders of the Interstate Commerce Commission. History has shown that the multiplication of special courts has retarded rather than promoted justice. To transfer the power to enforce or defend the orders of the Interstate Commerce Commission to the Department of Justice, I fear, spells further delay and a divided responsibility. They appeal to me as a well-concealed attempt to emasculate the present law, and should be carefully considered and discussed. Our attorney, Mr. Cowan, who had a great deal to do with the framing of the present interstate-commerce law, will address you at length upon these proposed changes, and I will therefore not attempt to discuss them further.

I regret, however, to notice that in his recommendation the President does not make any reference about requiring the railroads to furnish cars and other transportation facilities upon reasonable notice, or to empower the Interstate Commerce Commission to regulate the service. This is an exceedingly important requirement, so far as the transportation of live stock and perishable freight is concerned. Naturally, perishable freight incurring extra expense during delay should have preference. During the past year there have been a great many complaints about the failure of the railroads to furnish cars, even when cars were ordered months in advance. In several instances that have come under my notice the railroads have wholly disregarded their plain duty in this respect. They have used their live-stock cars for the carriage of other freight, while live-stock shippers have been forced to hold their herds at the loading point waiting for cars. Last year the railroads had sufficient cars to take care of the live-stock traffic, and there was no delay in furnishing them. This year there has been no increase in the volume of live stock transported, yet there has been a pronounced shortage of cars, indicating quite plainly that the live-stock equipment has been used for other classes of freight. The complaint as to shortage is not confined to any one section of the country. We hear the same story from Texas, New Mexico, Arizona, Colorado, and Wyoming. The only way to correct this ever-recurring shortage is to enact a law compelling the railroads to furnish cars upon reasonable notice, and fixing adequate penalties for failure to do so, at the same time providing for a reasonable demurrage to be paid by the shipper should he fail to load the cars on the date for which they were ordered. The service of the railroads in handling live stock after it is loaded is not as good this year as last. Formerly it was the custom to give live stock a little special attention. Now it is treated like any other class of freight, being handled in the same trains and at the same speed as dead freight. In order to secure better service, the Interstate Commerce Commission should be empowered to prescribe a fixed reasonable speed minimum, adjusted to meet the varying conditions in different parts of the country.

The CHAIRMAN. I also have resolutions adopted at the Thirteenth Annual Convention of the American National Live Stock Association, a portion of which refer to these bills to amend the Interstate Commerce Act. These may be inserted in the record.

(The resolutions referred to are as follows:)

#### RESOLUTION No. 7.

RELATIVE TO FURNISHING CARS TO TRANSPORT LIVE STOCK AND OTHER PERISHABLE FREIGHT, AND TO GIVE PROMPT AND EFFICIENT SERVICE.

Whereas many of the railroads have failed to supply themselves with sufficient facilities to perform their duties as common carriers in receiving and transporting live stock, and have failed to supply cars for such great length of time after orders have been given therefor that a large proportion of the live stock marketed was so

much delayed, generally for weeks, and in many instances for months, that they lost seriously in flesh and condition; and after cars were supplied and live stock loaded have moved the same at such low rate of speed and otherwise delayed shipments as to seriously damage such live stock; and

Whereas there are as a whole more stock cars and no greater shipments the past season than heretofore, and it is our belief, from observation and experience, that there has been a reckless indifference of the railroad management, in localities where this disastrous condition has existed, in supplying themselves with stock cars or in utilizing what they have been able to obtain to transport live stock, either permitting the cars to stand idle, as has often been the case, or using them in transporting other traffic at a time when live stock was being held for shipment and fast depreciating in value, thereby producing a wanton destruction of property; and

Whereas there exists no adequate means of compelling the railroads to perform their duty to furnish cars and perform the transportation service in reasonable time, and no means of securing adequate redress for failure of the railroads to perform those duties, where they fail to do so; and

Whereas there is no way by which one railroad can compel its connections to exchange empty cars for loaded cars of live stock, or to receive and forward live stock in the cars in which they are loaded; and

Whereas the refusal of railroads to permit cars to go off their own lines and to deliver cars to other lines has to a great extent impaired the efficiency of the cars which are available, and placed it beyond the power of many railroads to secure cars or a return of cars or exchange of cars and in this way demoralized the railroad service; and

Whereas we believe that if left to themselves the railroads will not better conditions, at least not relieve them, in absence of some law which compels a free exchange and interchange of cars to enable each road to get back empty cars for loaded cars delivered to its connections, and a law which fixes penalties to compel the furnishing of cars to shippers, and the exchange and interchange as between railroads; now, therefore, be it

*Resolved, by the American National Live Stock Association, in convention assembled, January 11, 12, and 13, 1910, That we respectfully urge the Congress of the United States to enact suitable legislation compelling the railroads to provide sufficient facilities to perform with dispatch their duties as common carriers in furnishing cars and transporting all freight, including live stock, and to promptly transport same, and to exchange loaded and empty cars, and otherwise to provide sufficient facilities, fixing penalties for failure of such duties, and giving to the shipper the right to recover, in any court of any State or Territory having jurisdiction, his damages and attorney's fees, and in case of failure to furnish cars for shipping live stock, double the damages sustained, and also empowering the Interstate Commerce Commission to enforce penalties for violation of the act, and to make rules and regulations with respect to the time and manner of giving notice for cars, furnishing cars, exchange and interchange of cars, and all needful rules and regulations in the administration of such law, and to compel its observance, and providing rules applicable to the different classes and kind of freight, and the varying circumstances and conditions of shipment; and,*

*Resolved, That copies of this resolution be promptly printed and sent to each of the western Senators and Congressmen, with the request that the same be read in both the Senate and House of Representatives as the expression of this convention.*

#### RESOLUTION No. 8.

##### RAILWAY REGULATION.

Whereas, live-stock producers, feeders, dealers, and shippers are vitally interested in the regulation by the Government of railroad rates, regulations, and practices to the end of securing just, reasonable, and nondiscriminatory rates and good and efficient service; and,

Whereas, while the present law and its administration by the Interstate Commerce Commission has been of great and lasting benefit, and has been faithfully and intelligently administered by the Interstate Commerce Commission, yet it falls short of affording the complete remedy and relief to which shippers are entitled, and is deficient in that the power of the Interstate Commerce Commission is not sufficiently broad to enable it to comprehensively consider and correct the evils and practices in transportation and rates; and

Whereas, Congress is about to undertake the revision of the act to regulate commerce in various particulars herein referred to, and we consider it the right and duty this association owes to the stock industry to place our views before Congress; now, therefore, be it

*Resolved, by the American National Live Stock Association, in annual convention assembled at Denver, Colo., January 11, 12, and 13, 1910, That we petition the Congress*

of the United States to amend the act to regulate commerce in the following particulars, authorizing the Interstate Commerce Commission:

(1) To institute investigations on its own initiative in the same manner as upon formal complaint, or to broaden a complaint to embrace such subject-matter as to it may seem proper;

(2) To proceed upon its own motion or upon complaint to investigate proposed changes in rates, regulations, and practices, upon notice thereof having been filed with the commission, and to suspend the effective date of such changes for sufficiently reasonable time to complete such investigation;

(3) To establish through routes and through rates wherever it deems the same necessary to secure reasonable rates and service, or to prevent unjust discrimination;

(4) To require stoppage in transit and fix reasonable rates therefor, in such instances as feeding and pasturing of live stock in transit, milling and elevation of grain in transit, the manufacture of animal foods from grain, hay, cotton seed, or other farm products, and the manufacture or treatment of such other freight as is usual by carriers, prescribing regulations and charges therefor;

(5) To regulate terminal and switching charges separately or in connection with the through rates to which they apply, without being required to treat the same separately, and upon the condition that its action can not be set aside, if the entire compensation for the service is reasonable, whether the amount allowed for the special service is below the cost of it or not;

(6) To prescribe rules to be inserted in tariffs, permitting shippers to route their freight over any established route where the same appears reasonable, in order to secure a reasonable service or just and reasonable rates;

(7) To make detailed valuations of the railroads of the United States under a system to be provided for by rules and regulations of the commission;

(8) To have full and exclusive charge of the defense of suits brought against it to enjoin or set aside its orders, and to proceed in the courts to enforce its orders, employing such means as it deems proper to that end, with authority to call upon the Department of Justice to prosecute or defend such suits, and that such sufficient appropriation be made for such expenses of the commission; and, be it further

*Resolved* (1), That we petition Congress to take no action with respect to any change in the present law in regard to the jurisdiction of the circuit courts of the United States, or in the establishment of any special court to hear and determine suits brought to set aside or enjoin or annul the orders of the commission, or to enforce the same, until the Supreme Court of the United States shall first have determined what that jurisdiction is under the present law, and until experience under the present law shall render such special court necessary;

(2) That Congress so amend the law that parties at interest as complainants before the commission shall have the right to appear by counsel in any suit brought in any court of the United States to set aside, enjoin, or annul any order of the commission, in such case, or any suit to enforce the same, under such rules as may be prescribed by such court;

(3) That in case Congress should enact a law providing for the establishment of a special court to have jurisdiction of suits brought against or by the commission, that such law contain the following provisions:

First. That the judges thereof shall be selected in the same nonpartisan manner as the interstate commerce commissioners.

Second. That the jurisdiction of such court be confined:

1. To questions of law—that is, as to whether the commission, in any matter brought before such court, has acted contrary to law or without authority of law, or denied to anyone his lawful rights, with equal privilege to shippers as well as carriers to present such questions of law to such court for decision;

2. To a determination of the question as to whether the commission's acts or orders violate any property rights of the carriers guaranteed under the Constitution of the United States;

Third. That the power and jurisdiction of the court to set aside any of the orders of the commission shall be limited to such questions of law and constitutional rights; be it further

*Resolved*, That a copy of these resolutions be submitted to the Senators and Congressmen of the United States, and called to the especial attention of the committees in Congress having before them the consideration of bills pertaining to the subject-matter of these resolutions.

## RESOLUTION No. 9.

## THE TERMINAL CHARGE AT CHICAGO.

Whereas the Supreme Court of the United States has held that the Interstate Commerce Commission erroneously made an order against the railroads entering Chicago from the Western States, directing that the \$2 per car terminal charge imposed by the railroads on live stock delivered at the Union Stock Yards be reduced to not more than \$1 per car if any charge is imposed; and

Whereas the commission has repeatedly held that considering both the through rates and the terminal charge that the charge against the shipper is unjust to the extent of \$1; and

Whereas the Supreme Court of the United States has in effect held that the unjust part of the charge is embraced in the through rate, and that the commission, if it thought proper to correct the unjust charge, must operate upon the through rate; and

Whereas we believe it to be just and proper and within the jurisdiction of the commission and its duty to make an order reducing the live-stock rates to Chicago on interstate shipments, to prevent the further collection of said unjust charge: Now, therefore, be it

*Resolved by the American National Live Stock Association*, That a petition be filed by this association with the Interstate Commerce Commission praying that it take such action in the premises as shall be necessary and to make the aforesaid correction in said rates, so as to relieve shippers of paying the same; and the officers and attorney of this association are hereby directed to proceed accordingly to the prosecution of such proceeding as to them shall seem necessary.

## RESOLUTION No. 10.

## SPEED LIMIT ON LIVE-STOCK TRAINS.

*Resolved by the American National Live Stock Association in convention assembled at Denver, January 13, 1910*, That in order to secure better service from railroads in the transportation of live stock, we recommend to Congress the enactment of a law to give to the Interstate Commerce Commission the power to prescribe a minimum speed limit for stock trains to suit the conditions in different localities.

The CHAIRMAN. I also have a portion of the report of Mr. William R. Wheeler, manager of the traffic bureau of the Merchants' Exchange of San Francisco, Cal., which may be inserted in the record.

(The extract referred to is as follows:)

The coming session of Congress promises to be one of great importance as regards legislation affecting matters in which this bureau is directly interested. The President in his recent addresses has pointed out the necessity for certain amendments to the interstate-commerce law in order that the latter may be strengthened. Among these is one giving the commission the power to suspend an advance in rates until the reasonableness of such advance shall have been determined by investigation. The action of the transcontinental railroad companies in making arbitrary and material advances in the rates on California products the first of this year and since would make it appear that argument as to the desirability of this measure is unnecessary.

Another measure which should be supported by this bureau is a liberal appropriation to be used by the Interstate Commerce Commission in securing an appraisal of the physical valuation of railway properties throughout the United States. Until this is done the commission must depend pretty largely upon the evidence offered by the railroads naturally interested in securing the highest possible estimates of valuation in order to justify the existence of freight rates against which complaint is directed.

An amendment to the interstate-commerce act which should in all fairness be incorporated therein is one providing that, where it is shown to the satisfaction of the commission that loss to the shipper has been incurred by reason of erroneous quotation of a freight rate by the agent of a railroad company, the commission shall have power to direct that restitution be made.

In order that San Francisco and other seaport cities may receive the full benefits accruing to such location, an amendment to the interstate-commerce act should be adopted, making it unlawful for railroad companies to own, control, or be interested in, either directly or indirectly, or maintain contractual relations or agreements with, competing steamship or steamboat or other lines of vessels. Such ownership or

control is to-day exercised over most of the steamships operating on the Great Lakes and along the Atlantic coast. It is not necessary for us to go beyond our own immediate horizon to find examples of like nature in our ocean and river transportation. It is obvious that the purpose and effect of railroad ownership and control of competing water routes is to maintain rates far above the natural water level, or those which would obtain if competition on the water were permitted to exist. The question of profit to be made by such water lines is to them of secondary consideration, the primary consideration being to protect the rates of a parallel rail route. Therefore there is, on the one hand, no incentive for the operation of such water routes to make profit or to increase business to a profitable volume by reducing rates of the water line to a reasonable figure, and, on the other hand, the existence of such railroad-owned line is a constant menace to a private owner, who would otherwise put on steamships to be operated in good faith and at rates which would attract business from the rails. Until the rates of water carriers are placed at a true water level by being based upon the cost of water carriage, instead of upon the rates charged by the railroads, San Francisco can not come into the full enjoyment and benefits of that heritage which is hers.

San Francisco, in common with other Pacific coast seaports, is expecting great benefits from the completion of the Panama Canal, chief among which is expeditious and regular steamship service between San Francisco and the Atlantic seaboard at true sea-level rates, which will not only have the effect of reducing the cost of distribution to the California producer, but will at the same time lower the cost of many of the articles which he consumes, thus, in the last analysis, materially increasing his purchasing power. Will such benefits be realized if the railway interests are permitted to operate steamships between, say, New York and San Francisco, occupying the field to the exclusion of independent owners, and maintaining artificially high rates for the protection of the transcontinental railroads? No independent owner would dare to engage in competition with such a line, no matter how invitingly high the rates might be, well knowing that rates would be dropped to an unprofitable figure upon the establishment of a new line, to his ultimate financial undoing. This is not a theory, as every steamship owner will attest. Experience of the past is the prophecy for the future.

Profitable export trade can be built up only on a profitable home market. Likewise the free and untrammelled development of coastwise traffic to the fullness of its possibilities should be the first step in line with the establishment of a foreign-going American merchant marine.

Furthermore, any mail-subsidy act should contain the proviso that no benefits under the act shall accrue to any steamship company enjoying exclusive privileges or preferential arrangements as to division of earnings, service, dispatch, transfer, or other facilities at the hands of connecting American railroads. Unless such a proviso is incorporated, private owners will not be encouraged by subsidies to establish trans-Pacific or Central and South American steamship lines, necessarily obtaining and distributing a large part of their traffic through the transcontinental railways, while the latter are permitted to give preferences of various nature to lines of steamships owned or controlled by themselves. While it is both desirable and proper that existing Pacific Ocean lines should enjoy to the fullest extent any subsidies which may be voted by Congress, the act should be so framed that in its practical operation they will not become the sole beneficiaries. In other words, every American shipowner should be guaranteed a "square deal" and equal opportunity to avail himself of the benefits of the subsidy.

The CHAIRMAN. Also a letter from the Merchants' Association of New York, by Edward D. Page, chairman of the committee on commercial law.

(The letter referred to is as follows:)

NEW YORK, February 5, 1910.

CHAIRMAN COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*House of Representatives, Washington, D. C.*

DEAR SIR: I am instructed by the directors of the Merchants' Association to write you that after full consideration of House bill 17267, relating to bills of lading, introduced on January 7 by Mr. Stevens, that the Merchants' Association approves of this bill, with the following exceptions:

First, that the words "carrier or" in the first lines of sections 3, 5, and 7 be stricken out.

The effect of this is to make the carrier penally liable. It is our belief that it is impossible to make the carrier penally liable and that this clause if insisted on will bring about a very serious reduction of the facilities now afforded to merchants and

manufacturers in the shipment of goods. It will be quite sufficient to make the persons guilty of the crime penally liable, and the few cases in which the carrier himself is the person who commits the crime may be disregarded.

Second, that the penalties for the misdemeanors described in the above-named clause be reduced to a fine of not exceeding \$500 or imprisonment not exceeding one year, or both.

It is our opinion that with the higher fines now prescribed by the bill juries would not convict the class of persons who are likely to commit the same.

We ask that this be received by your committee and spread upon your records.

Yours, truly,

MERCHANTS ASSOCIATION OF NEW YORK,  
By EDWARD D. PAGE,  
*Chairman Committee on Commercial Law.*

The CHAIRMAN. Also a letter from William A. Glasgow, jr., of Philadelphia.

(The letter above referred to is as follows:)

[Law offices William A. Glasgow, jr., 412-417 Real Estate Trust Building, Broad and Chestnut streets, Philadelphia.]

FEBRUARY 8, 1910.

HON. JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

MY DEAR SIR: I am informed that several bills have been introduced in Congress, the purpose and effect of which would be to amend the act to regulate commerce, and I have before me one of such bills (H. R. 17536), having been introduced by Mr. Townsend, and referred to the Committee on Interstate and Foreign Commerce of the House of Representatives, the title of which is "to create an interstate commerce court," and to amend the act to regulate commerce approved February 4, 1887, as amended, etc.

In reading this bill, there are several suggestions which occur to me, and which I respectfully desire to call to your attention.

First. The court provided for in this bill is to be composed of five circuit judges of the United States, to be designated by the Chief Justice of the United States, and the longest period of service on the interstate commerce court provided therein for any one judge is five years, and at first only one judge can sit for that length of time. It is evident from section 4 of this bill that it is intended that the judges of this court are to be constantly changing, and each judge is to serve on the court for a very short period.

I have been led to conclude that the justification for such a court could only be that there would be a tribunal created, fitted by experience and constant acquaintance with transportation and traffic questions to build up harmonious and reasonable rules of construction of the act to regulate commerce, so that both shippers and carriers may be assured of fair and intelligent treatment, and that uniformity may, to some extent, be brought out of the present divergent views, entertained in the many circuit courts of the United States. I suggest to you that this result can not be attained by the creation of a court presided over by judges who are constantly changing, and each of whom sits upon the court for a short period, and the frequent calling to service thereon of circuit judges whom, with perfect respect I may say, have had no experience as to the questions to be passed upon.

My suggestion is that if such a court is to be provided for, the judges thereof should be selected from those members of the profession or present judges who have had experience upon questions on which the court will have to pass, and they should serve permanently in this court.

Second. Paragraph 2 of section 1 of the bill provides that the new court shall have jurisdiction of "cases brought to enjoin, set aside, annul, or suspend any order or requirement of the Interstate Commerce Commission."

Section 3 provides: "That suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the court of commerce against the United States."

The language of the two sections above would seem to authorize the court to enjoin "any order of the Interstate Commerce Commission" which the court might think inequitable or unjust or which it might not approve on any other ground.

Beginning with the case of Abilene Cotton Oil Company (204 U. S.), the Supreme Court has been working out a harmonious and well-considered construction of the act

to regulate commerce, so far as the jurisdiction of the courts and the Interstate Commerce Commission is concerned. The recent cases in that court of Illinois Central R. R. Co. v. Interstate Commerce Commission and Baltimore and Ohio R. R. Co. v. Pitcairn Coal Co. et al. (not yet reported) carry one step further the Supreme Court's views as to the relative jurisdictions of the courts and the commission, and practically declare that the courts have no right to interfere with the exercise by the commission of the powers conferred upon it by Congress, so long as the commission does not overstep the limits of its jurisdiction. That there may be no confusion brought about by the proposed act creating the interstate commerce court, I would suggest that it be distinctly declared that the jurisdiction of the court shall not extend beyond the present jurisdiction of the circuit courts of the United States, and that the court should not exercise powers beyond such as the circuit courts now exercise.

Third. By section 4 of the bill: "All cases and proceedings in the court of commerce which, but for this act, would be brought by or against the Interstate Commerce Commission, shall be brought by or against the United States."

Section 5 provides that an assistant attorney-general, under the supervision and control of the Attorney-General, shall have charge of the Government's interests in all cases and proceedings in the court of commerce and in the Supreme Court of the United States.

The bill further provides: "The Interstate Commerce Commission and its attorneys shall take no part in the conduct of any such litigation."

I suggest to you that the result of the enactment of these two sections in this form would be unfortunate for several reasons.

First. A shipper may be vitally interested in the question before the court, and may have been thoroughly familiar with the facts of the case or proceeding from the beginning, and may desire to have his counsel appear and present his views, but under these two sections I think it very doubtful whether the court could hear the counsel of a shipper, and he would have to sit back and hear the case, absolutely vital to his interests, presented by an Assistant Attorney-General, whose experience with the matters involved is necessarily limited. There should certainly be some provision authorizing anyone interested in the result of the litigation to appear in the case, within the discretion of the court.

Second. The Interstate Commerce Commission is composed of experts, as the Supreme Court has said, and is a permanent body, its organization being provided for the purpose of enforcing a systematic observance of the act to regulate commerce.

The Assistant Attorneys-General have changed frequently with the administration under which they serve, and, indeed, sometimes more frequently. I have known many of them of great earnestness, ability, and learning, and it is no want of respect for me to suggest that their efficiency in working out an harmonious and well-considered enforcement of the act to regulate commerce will be greatly hampered by the brevity of their terms of service.

The shipper is always at a disadvantage in a contest with counsel for the carriers, by reason of the fact that year in and year out the latter are working toward a construction of the act which will be useful to the carriers, and if the commission are to be forbidden from taking any part in the enforcement in the courts of the act, then the shipper will lose the assistance of a body which year in and year out have before them the enforcement of the provisions of the act to regulate commerce. I would earnestly suggest that in important cases the commission should have the right, if it so desires, to appear and present its views, or, if in its opinion necessary, to institute cases or proceedings before the court.

Fourth: Under the bill above referred to, and, indeed, under the present act, the carriers can have the findings of the commission reviewed by the courts, but a shipper has no such right, and I submit that the shipper should be put upon the same basis in this regard as the carrier, and the right to review the finding of the commission should apply to either party.

Fifth: Section 5 forbids a railroad corporation to hereafter acquire the stock of "any railroad corporation which competes with" it, and I submit that this should be carried further, and require railroad corporations which have acquired stock in such railroad corporations to dispose of the same. The effect of such ownership can be clearly seen in the proposed rates of carriers on bituminous coal to the Lakes, which are now held up by injunctions, and if such stock ownership continues will no doubt be reflected in the tidewater rate on coal.

Sixth: I suggest that section 9, page 20, of the bill should be amended by inserting after the word "reasonable," in line 9, the following: "Which said reasonable charge and allowance the said owner shall be entitled to recover from the carrier or carriers transporting the property aforesaid." As at present the act leaves it optional with the



carrier whether to pay the owner ~~anything~~ for services rendered "connected with such transportation," and I suggest that if the owner renders service which the carrier should perform in transportation and the carrier avails itself thereof, then the carrier should pay the shipper therefor, but not a greater amount than is reasonable.

Perhaps there are other suggestions as to this bill which would be pertinent, but I shall not further tax your patience, and I submit the above views in the hope that you may find something therein which may aid you in the difficult problems now presented for your consideration.

Very truly,

WM. A. GLASGOW.

The CHAIRMAN. Also the decision of the United States court for the eastern district of Pennsylvania in the case of Philadelphia and Reading Railroad Company v. Interstate Commerce Commission, and the opinion of the circuit court of the United States for the southern district of California in the case of the Arlington Heights Fruit Company et al. v. The Southern Pacific Company et al. Both of these contain more or less information, and may be inserted in the record. (The above-mentioned decisions are as follows:)

PHILADELPHIA AND READING RAILWAY COMPANY ET AL.

v.

INTERSTATE COMMERCE COMMISSION.

[In the United States Circuit Court for the Eastern District of Pennsylvania. Decided November 22, 1909.]

1. Complainants filed a bill to enjoin the Interstate Commerce Commission from enforcing its order establishing a tariff rate on big-vein coal carried from the Georges Creek and Elk River regions in Maryland to coast points in other States. Upon demurrer setting up that the bill showed that the commission had taken all the steps required by the act to regulate commerce, that the conclusion of the commission was not arbitrary or reached through fraud, that the order of the commission is lawfully issuable, and that its act in this case is final and conclusive and not reviewable by the courts; *Held*, That upon the circumstances disclosed by the record the demurrer should be sustained and the bill dismissed.
2. The fixing of rates as an incident to the regulation of commerce being a non-judicial function, it follows that when the legislative branch has itself acted therein, or by proper delegation of its powers, has acted through the commission, such action, provided no legal, constitutional, or natural right has been violated, is not to be suspended or vacated by a court.
3. When the question of suspending or setting aside an order of the commission comes before a court under the act to regulate commerce the question is one of law, namely, whether the commission transcended its power or exercised such power without due regard to law. The judicial department should not require the commission to answer a bill in equity the purpose of which is to secure a decree which in effect annuls the order, unless the bill makes a clear prima facie case that the facts adduced before the commission could not possibly support the order, or that the complainant's legal or constitutional rights have been violated.
4. Complainants contended that the rates on big-vein coal when consigned for transshipment by vessel were held unreasonable and unjustly discriminatory by the commission wholly upon the ground that by reason of the higher cost of production of the big-vein coal it could not, when so consigned, successfully compete with the coals of the Pocahontas and New River districts; *Held*, That the conclusion stated above is not warranted from the pleadings, but that the record shows that the commission based its action on other and different grounds.
5. While a reduction by complainants of their rates to the Pennsylvania and West Virginia fields was a proper business step, since otherwise they would have had no traffic from those fields, yet in the face of such reduction of rates to a part of the group complainants had no legal right to retain the higher rate on the remainder of the group. The fact that the latter did not need the reduction to meet competition was no legal justification to warrant its retention.

6. Putting big-vein coal on an equality with all the other coals in this group was properly based by the commission upon the all-sufficient ground of dissimilarity of charge for similarity of service; but wholly apart from the legal grounds there was a practical commercial reason for relief in the increased cost of mining incident to the exhaustion of a very thick vein. An examination of this case in all its bearings satisfies the court not only that the commission did not act unlawfully, but that it was constrained to order the enforcement of a uniform rate in the whole group in accordance with the provisions of section 15 of the act.
7. The Pennsylvania Railroad Company declared that as its lines enter the Georges Creek Basin only and do not enter the West Virginia and Pennsylvania fields, the order of the commission will subject it to pains and penalties should the Baltimore and Ohio Railroad Company hereafter change its rates from the West Virginia and Pennsylvania fields; *Held*, That such danger is too remote to invoke injunctive relief. If any such construction is placed upon the order, there will be opportunity for that road to apply to the commission for modification of the order, or to this court for injunctive relief.

Charles Heebner, Hugh L. Bond, jr., and George Stuart Patterson, for complainants.

J. Whitaker Thompson, United States attorney, and Luther M. Walter, special assistant United States attorney, for defendant.

Before GRAY, BUFFINGTON, and LANNING, Circuit Judges.

#### OPINION OF THE COURT.

BUFFINGTON, Circuit Judge, delivering the opinion of the court:

This is a bill brought by the Baltimore and Ohio Railroad Company and a number of other railroad companies against the Interstate Commerce Commission to enjoin the latter from enforcing its order of June 7, 1909, whereby it established a tariff rate on big-vein coal carried from the Georges Creek and Elk River regions in Maryland to coast points in other States. To this bill the commission demurred. The questions pertinent to our disposition of the case may be considered under the first and fifth grounds, of demurrer, which are:

"I. That it appears from the face of said bill that all of the proceedings required by statute to be taken were duly taken and had; that after a formal complaint and answer a full hearing was had; that the commission arrived at its conclusion after being fully advised; that the order complained of was duly given, made, rendered, and served; and that the conclusion of said commission was not arbitrary or reached through fraud; and therefore the act of the defendant is final and conclusive and not reviewable by the courts."

"V. That it appears from the face of the bill of complaint that the order of the commission is lawfully issuable under the act to regulate commerce."

By section 15 of the interstate commerce law, as amended by the act of June 29, 1906 (34 Stat., 584), Congress empowered the commission, if it "shall be of the opinion that any of the rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act \* \* \* are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial \* \* \* to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged."

The jurisdiction of the court in this case is invoked under section 15, which provides that the commission's order may "be suspended or set aside by a court of competent jurisdiction," and section 16, which designates the particular court to exercise jurisdiction and provides that "jurisdiction to hear and determine such suits is hereby vested." Now, the power conferred being to suspend or set aside the commission's order, the question arises, In what way and to what extent will this court exercise its powers in order "to hear and determine such suits?" Without referring to that general jurisdiction which federal courts, within constitutional limits, necessarily have to prevent infractions of the law, we note that the jurisdiction here invoked is conferred by the statute above quoted, and its purpose is to submit the action of an executive branch of the Government to the judgment of the court, that it may hear and determine such suit with a view to suspending or setting aside that action. On the argument counsel did not question the right of the commission under the act to fix maximum rates, provided they were not confiscatory.

Now, manifestly, courts have no power to fix rates. *Maximum Rate cases* (167 U. S., 499); *Gordon v. United States* (117 U. S., 697); *Reagan v. Farmers' Loan & Trust Co.* (154 U. S., 397). No such authority is conferred on federal courts by the Constitution, and by its grant to Congress of the power "to regulate commerce \* \* \* among the several States," and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers," the exercise of power to regulate commerce is restricted to that agency. The fixing of rates as an incident to the regulation of commerce, being a nonjudicial function, it follows that when the legislative branch has itself acted therein, or by proper delegation of its powers has acted through the executive branch, such action, provided no legal, constitutional, or natural right has been violated, is not to be suspended or vacated by a court.

In pursuance of the powers above referred to the commission has made such an order in the premises, and that order is now in force unless it "be suspended or set aside by a court of competent jurisdiction." Now, on what principles should this court proceed in suspending or setting aside an act of an independent branch of the Government? Manifestly, the act is one of those administrative acts of the executive branch of the Government, duly empowered thereto by the legislative branch, that falls within that category of which Mr. Justice Harlan spoke in the *Union Bridge case* (204 U. S., 386):

"If the principle for which the defendant contends received our approval the conclusion could not be avoided that executive officers in all departments, in carrying out the will of Congress as expressed in statutes enacted by it, have, from the foundation of the National Government, exercised and are now exercising powers, as to mere details, that are strictly legislative or judicial in their nature. This will be apparent from an examination of the various statutes that confer authority upon executive departments in respect of the enforcement of the laws of the United States. Indeed, it is not too much to say that a denial to Congress of the right, under the Constitution, to delegate the power to determine some fact or the state of things upon which the enforcement of its enactment depends would be 'to stop the wheels of government' and bring about confusion, if not paralysis, in the conduct of the public business."

It is therefore apparent that when the question of suspending or setting aside an executive act comes before a court under such statute the question is one of law, namely, whether the executive transcended its power or exercised such power without due regard to law. If, for example, there was a failure to comply with statutory requisites of notice, or to afford a statutory hearing, or the action taken was confiscatory—these are all elements a court might consider, and in exercising such jurisdiction inquire into the facts to ascertain the real subject involved as throwing light upon the lawful or unlawful character of the order under review. The principles affecting this exercise of jurisdiction are clearly set forth by Judge Lanning in *Appleby v. Cluss* (160 Fed. Rep., 984), where, on a bill to enjoin execution of a fraud order made by the Postmaster-General, he said:

"A due regard for an order of an executive department of the Government demands that the judicial department shall not require the head of that executive department, or any of his subordinate officials, to answer a bill in equity, the purpose of which is to secure a decree which in effect annuls the order, unless the bill makes a clear prima facie case that the facts adduced before the executive department could not possibly support the order or that the complainant's legal or constitutional rights have been violated."

This view is in accord with the principles set forth in *San Diego v. National City* (174 U. S., 739), and cases cited, viz: *Spring Valley v. San Francisco* (82 Cal., 286); *Chicago v. Wellman* (143 U. S., 339); *Reagan v. Farmers' Loan* (154 U. S., 362); *Smyth v. Ames* (169 U. S., 466); *Henderson v. Henderson* (173 U. S., 592); *Missouri Co. v. Interstate Commerce Commission* (164 Fed. Rep., 645); *Knoxville Water case* (212 U. S., 1); *Consolidated Gas case* (212 U. S., 19).

In the present case all the provisions of the statute were observed and the parties concerned were duly notified and fully heard. It is, however, averred in the bill that the commission "based its finding that the rates on the big-vein coal when consigned over the lines of your orators to Baltimore, Wilmington, and Philadelphia for transshipment by vessel were unreasonable and unjustly discriminatory wholly upon the ground that by reason of the higher cost of production of the said big-vein coal it could not, when so consigned, successfully compete with the coals of the Pocahontas and New River districts."

Assuming for present purposes that if this conclusion were correct, the commission could not legally base an order on that ground, analysis shows not only that the pleadings have not brought before us all the facts and proofs on which the commission acted, but that those which are before us show that the conclusion stated above is not warranted and that the commission based its action on other and different grounds. To

that end we address ourselves to the facts. The rate here in question applies to the transportation of coal mined from the big vein in the Georges Creek and Elk Garden region, which we will hereafter refer to as the Georges Creek Basin. For the purpose of rating, these two fields and the Somerset (which the commission refers to as the Pennsylvania) field, to the north and west, and the Austen-Newburg (which the commission refers to as the West Virginia) field, to the west, were included in one group and had been so grouped for ten years. Thus, in their report in the present case and annexed to the bill, the commission says:

"Rates from Georges Creek Basin and from the Pennsylvania and West Virginia fields are the same when the coal is destined for track delivery on the lines of the principal defendants; that is to say, coal from mines in the Pennsylvania and West Virginia fields takes the same rate as coal from the Georges Creek Basin when it is destined for local consumption at tide-water points. This is still the relation of the rates on coal from the three fields when destined to local points on the Baltimore and Ohio and Western Maryland. The three fields have been thus grouped for ten years or more. Moreover, Philadelphia, Wilmington, and Baltimore and intermediate points, at the other end of the haul, have for a like period of time also been grouped together under one rate for track delivery."

On all the coal carried from the mines in this group for track delivery to Philadelphia, Wilmington, and Baltimore the rate was \$1.60 per ton, and for over-pier delivery for shipment inside the Chesapeake and Delaware capes the rate was \$1.35 per ton. When it came, however, to over-pier deliveries for shipment beyond the capes the Georges Creek Basin coals were charged a materially higher rate than the West Virginia and Pennsylvania fields, although all were in the same group and the Georges Creek had a shorter and down-grade haul as compared with the longer and up-mountain grade to Cumberland in the case of the West Virginia and Pennsylvania fields. Now, the effect of the present order is to put all the coal from the group on an exact equality of \$1.60 per ton for track deliveries, \$1.35 for over-pier deliveries for shipment inside the capes, and \$1.18 for over-pier deliveries at Baltimore and \$1.25 at Philadelphia for shipment outside the capes.

The reason why shippers submitted to these varying prior rates in the same grouping is quite plain. The coal in the Pennsylvania and West Virginia fields of the group was ordinary bituminous coal and was found in small veins, while that in the Georges Creek Basin came from the "big vein," a stratum of such unusual thickness that it was mined at far less cost than the thinner veins, while its high grade and peculiar characteristics gave it a market of its own with which no other coal competed. Of this condition the commission say in their report:

"The defendants, the Baltimore and Ohio and the Western Maryland, reach three coal districts, which, for convenience, are referred to in the report as the Pennsylvania, West Virginia, and Georges Creek fields. Under an adjustment made in 1900, which was then entirely satisfactory to all concerned, these three fields were grouped together and took the same rate on coal destined for track delivery at points on the lines of those two roads. At that time the output of Georges Creek Basin consisted of big-vein coal only, and it was concededly superior in quality to the coals mined in the other two districts. \* \* \* The record showed that there was no competition from outside coal fields at local points on those lines. But when the coal went over the piers at Philadelphia, Baltimore, and Curtis Bay, for destination inside and outside the two capes, it met the more or less severe competition of water-borne coal from mines on the Chesapeake and Ohio, Norfolk and Western, Pennsylvania, and the New York Central railroads. It was necessary, therefore, to shrink the rates in order to enable the coal from these three fields to enter those markets. Because, however, of the superior quality of Georges Creek coal, and of its ability more easily to meet such competition, the rates on that coal were shrunk less than the rates on the coals from the Pennsylvania and West Virginia fields. The result of the adjustment was that, as compared with the rates from these fields, there was a differential of 10 cents a ton against Georges Creek coal when water borne to competitive points inside the capes, and of 15 cents a ton when destined to points outside the capes."

Now, to us it is clear that while a reduction by the railroad of their rates to the Pennsylvania and West Virginia fields was a proper business step, since otherwise the carrier would have had no traffic from those fields, yet it is equally clear that in the face of such reduction of rates to a part of the group the railroad had no legal right to retain the higher rate on the remainder of the group. The fact that the latter did not need the reduction to meet competition was no legal justification to warrant its retention. Speaking in the recent case of *The Pennsylvania Railroad Company v. International Coal Mining Company* (— Fed. Rep., —) of an attempt to justify different rates on coal hauled from the same grouping because one was "contract coal" and the other "free coal," we said:

"We are thus brought face to face with the question whether the existence of these contracts created a dissimilarity of circumstance and condition under which the service of carriage was rendered. To us the reading of the act is clear. The act contemplates 'compensation for any service rendered.' Now, it is manifest that 'service rendered' is the physical service of carriage. Elsewhere it is spoken of as 'a like and contemporaneous service;' such service is a 'service in the transportation;' it is a 'service in the transportation of a like kind of traffic;' and it is a service in transportation 'under substantially similar circumstances and conditions.' The law having in view the carriage of freight and equal rates to all, it is clear to us that the words 'substantially similar circumstances and conditions,' as used in this subsection, are those which affect transportation, and not those which involve personal conditions or contractual relations between one particular shipper and the carrier, but are such things only as are circumstances of carriage generally. In *Wight v. United States* (167 U. S., 513) it was sought to differentiate the service performed by the different terminal facilities of the two shippers at their respective warehouses, but the court held that these were not the circumstances and conditions of the act, but that the circumstances and conditions the act contemplated were those which affected the actual carriage of the freight, using this language: 'It was the purpose of this act to enforce equality between shippers, and it prohibits any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor.' And that this phrase, 'circumstances of carriage,' was a carefully chosen one, limiting the circumstances to such as affected haulage of freight, is shown in *Interstate Com. Com. v. Alabama* (168 U. S., 166), where, referring to *Wight v. United States* (supra), the court say: 'We there held that the phrase "under substantially similar circumstances and conditions," as used in the second section, refers to the matter of carriage, and does not include competition between rival routes.' It follows, therefore, that if these circumstances and conditions of section 2 are those which affect haulage and do not include competition between rival routes, they do not include individual elements affecting individual shippers. The purpose of the section is to afford identity of rate for substantial identity of transportation service, and anything that does not aid in determining what is such substantial identity of haulage does not aid in the application of the section."

It will thus be seen that while the nonuniform rate was continued as against Georges Creek Basin, there was no legal justification for such continuance. Later this matter came before the commission in *Georges Creek Basin Coal Company v. B. & O. R. R. Co.* (14 I. C. C., 127), and of that case the present report says:

"In 1902, after this relation of rates as between the three fields had been in existence for about two years, the operators in Georges Creek Basin commenced for the first time to mine small-vein coal, which, as stated, is inferior in quality to the big-vein coal, and is substantially the same as the coals mined in the Pennsylvania and West Virginia fields. But as the defendants in that proceeding made no distinction in their rates between big-vein and small-vein coal, the latter, with differentials of 10 and 15 cents a ton against it, could not move by water in competition with coal of the same quality from the other two fields; the record in fact showed that from the time the small-vein mines were opened in 1902 to the time when the hearing of that complaint was had, not a single cargo of small-vein coal was shipped to competitive points either inside or outside the capes, although coal in large volume had reached those destinations from the other two fields. It was under these circumstances that the original complaint was filed asking for relief on behalf of the small-vein operators. The complainants contended that the small-vein coal, with differentials against it, could not successfully enter the markets for water-borne coal. No attack was made in the complaint on the inherent reasonableness of the rates from Georges Creek Basin to tide-water points, but only upon the reasonableness of those rates as applied to small-vein coal, when compared with the rates accorded to operators in the Pennsylvania and West Virginia fields. No complaint was made at that time either by or on behalf of the producers of big-vein coal in Georges Creek Basin. On the contrary, the witnesses who testified gave us to understand that the big-vein coal, because of its superior quality, had been able to hold its own under the existing rates in competition with the coals from the other fields, and therefore required no reduction in order to retain its markets. We were, in fact, advised that the big-vein coal had been so well and favorably known that it practically met with no competition at all from other bituminous coals, except possibly from the New River coal on the Chesapeake and Ohio and the Pocahontas coal on the Norfolk and Western. Although it was quite unusual, as we then explained, to have two rates on coal from one mining district, nevertheless as the big-vein coal was not shown to require any reduction in rates, but was said to be moving freely in competition with the other coals, and as the issue made on the complaint was directed against the rates on small-vein coal only, we concluded, without committing ourselves

to the general propriety of two rates from one district, and basing our action strictly on the record before us, to order a reduction in rates on small-vein coal to tide-water points, so as to permit that coal to meet the competition of coals of like quality from the Pennsylvania and West Virginia fields. We thereupon entered such an order without disturbing the rates on big-vein coal, and the lower rates on small-vein coal were subsequently published by the defendants in that complaint. But we said in explanation of our exact attitude toward the whole situation that 'if the results are such as to demonstrate that the two rates can not be successfully maintained without giving rise to discriminations and unlawful practices, the question will then arise whether the lower rate should not be made effective from all mines in the basin, whether producing big-vein or small-vein coal. And it may be well also now to emphasize the fact that this disposition of the matter is not to be understood as an approval of such a rate adjustment, either for general application or as controlling our action in the future, in case complaint should be made of the rate on water-borne coal from the big-vein mines. We are to be understood only as giving recognition, on the record before us, to the right of the small-vein operators to have a rate that will enable them to move their output to the consuming markets and give them a reasonable opportunity to compete with similar coal from adjacent fields moving through Cumberland to tide water for destinations inside and outside the capes.'

Accordingly the rate on small-vein coal from Georges Creek Basin was made uniform with that from the Pennsylvania and West Virginia fields. Subsequently the proceeding in the present case was brought on behalf of companies in the Georges Creek Basin engaged in the mining of both big-vein and small-vein coal, and two forms of relief were sought, viz: In the case of the big-vein coal:

"That the differentials of 10 and 15 cents a ton against the big-vein coal constitute an undue discrimination that ought to be removed, and that the big-vein coal ought to be placed on a parity with the small-vein coal and with the coals from the Pennsylvania and West Virginia fields."

And in the case of both the big-vein and the small-vein coals of Georges Creek Basin, that they be removed from their grouping with the Pennsylvania and West Virginia fields, viz:

"2. That as the Georges Creek Basin is nearer to tide water than the Pennsylvania and West Virginia fields and the haul less expensive, both on account of the shorter mileage and on account of the more favorable character of the grades, the rates from these mines to all points on the lines of the defendants should be less than the rates from the more distant western mines with which the mines of the Georges Creek Basin are now grouped for rate-making railroads."

The relief by way of regrouping was denied, and while that question is not before us it is helpful to an understanding of the present case to note that the commission say:

"While we are not disposed to criticise the desire on the part of the operators at Georges Creek to secure better rates than their competitors in the other two fields enjoy, we are not inclined, on the other hand, to yield to their demand. There are many coal groups that are much more extensive than this group. Moreover, it has been our understanding that group rates, particularly on such a commodity as coal, are advantageous to the public, the carriers, and the mine owners alike. The disrupting of this group of coal-producing districts and coal-consuming destinations after it has been in effect for so many years could not fail to lead to a widespread confusion in coal rates, and we see nothing in the record to justify such an order."

As to the other relief sought, viz, putting big-vein coal on an equality with all the other coals in this group, the report shows not only that there was the all-sufficient ground we have noted above, viz., that there was a dissimilarity of charge for similarity of service, but that wholly apart from the legal ground there was a practical commercial reason for relief in the increased cost of mining due to drawing pillars, greater water troubles, longer haulage, lumbering, etc., incident to the exhaustion of a very thick vein. The report then states:

"The report of the commission in the previous proceeding indicates the action that might fairly be anticipated whenever the question of the reasonableness of the rates on big-vein coal, when water borne to points inside or outside the capes, was properly presented to us accompanied by adequate proof that the differentials against it operated to its disadvantage. Such a complaint is now before us, and the testimony makes it quite clear that the reduction in the rates on small-vein coal required under our order in the previous case ought now to be extended to the rates on big-vein coal."

Indeed, an examination of this case in all its bearings satisfies us not only that the commission did not act unlawfully, but was constrained to order the enforcement of a uniform rate in the whole group in accordance with the provisions above quoted from section 15 of the act.

We are therefore of opinion the demurrer should be sustained and the bill dismissed. It remains to consider an argument peculiar to the Pennsylvania Railroad advanced at the hearing. It was in effect said that as the lines of that railroad enter the Georges Creek Basin only and do not enter the West Virginia and Pennsylvania fields the order will subject it to pains and penalties should the Baltimore and Ohio hereafter change its rates from the West Virginia and Pennsylvania fields. It suffices to say that such danger is too remote to invoke injunctive relief, and that if any such construction is placed upon the order as is now suggested there will be opportunity to that road to apply to the commission for modification of the order or to this court for injunctive relief.

ARLINGTON HEIGHTS FRUIT COMPANY ET AL.

v.

SOUTHERN PACIFIC COMPANY ET AL.

[In the circuit court of the United States for the southern district of California November 22, 1909.]

1. Defendants propose to increase their rates for the transportation of lemons from points in California to eastern markets from \$1 to \$1.15 per 100 pounds. Upon application of complainants for a temporary injunction restraining defendants from collecting the proposed increase in rates until a hearing is had upon the merits by the Interstate Commerce Commission: *Held*, That for the present the equity of keeping the present rate appears to be with the complainants until the subject can be investigated by the commission, and that temporary injunction should be issued upon complainants giving bond to protect the defendants in case the commission decides that the increase in rates was reasonable.
2. The final determination as to the reasonableness of the rates rests with the Interstate Commerce Commission, and there is no disposition on the part of the court to intrude upon the jurisdiction of that tribunal.
3. In reaching conclusions upon questions presented in an application for temporary injunction such as this it is the duty of the court to balance the equities between the parties and ascertain which of them will suffer the greater detriment or inconvenience by the action of the court. Facts of this case considered and conclusion arrived at that the equities of this case lie with the complainants.
4. It seems that the lemon growers understood that the present rate was to be made permanent and enlarged the area of their orchards and increased their business upon this faith and basis as factor of expense, and as nothing has occurred since to justify defendants in increasing the freight rate, the status quo should be maintained for the protection of the lemon growers until a hearing is had upon the merits by the proper authority.
5. Increase of the rates on lemons upon the facts presented by the record does not appear to be justified by the recent increase in customs duties on lemons prescribed by the Payne-Aldrich Tariff Act.
6. The policy of imposing protective duties is for the benefit of the producer and to encourage home productions and home manufactures, and not to increase the cost of railroad transportation.

Joseph H. Call, Asa F. Call, and Levy Mayer for complainants.

J. W. McKinley for Southern Pacific Company.

T. J. Norton and U. T. Clotfelter for Atchison, Topeka & Santa Fe Railway Company.

A. S. Halsted for San Pedro, Los Angeles & Salt Lake Railroad Company.

#### OPINION OF THE COURT.

MORROW, Circuit Judge (orally):

The court is not required at this stage of the proceedings to determine whether the proposed rate of \$1.15 per 100 pounds for the transportation of lemons to the New York market is just and reasonable or unjust and unreasonable. Indeed, the final determination of that question rests with the Interstate Commerce Commission, and there is no disposition on the part of the court to intrude upon the jurisdiction of that tribunal.

The present application is for a temporary injunction that will preserve the status quo until a hearing is had upon the merits by the proper authority, the status quo being a charge of \$1 per 100 pounds for the transportation of lemons from California to the New York market. What the court is required to do now is to determine from the evidence submitted whether there is a reasonable probability that the complainants will be able to maintain the case set forth in the bill and establish the fact that

the proposed increased rate of \$1.15 per 100 pounds will be unjust and unreasonable; and whether pending such a hearing upon the merits the complainants will suffer an irreparable injury. In reaching conclusions upon these questions it is also the duty of the court to balance the equities between the parties and ascertain which of them will suffer the greater detriment or inconvenience by the action of the court. If the balance of detriment or inconvenience, in the event the temporary injunction is refused, is against the complainants, then the injunction will be granted. But if, on the other hand, the balance of detriment or inconvenience is against the defendants, in the event the temporary injunction should issue, then it should be refused. If in the present case the temporary injunction is issued, the defendants will be denied the right to collect the increased rate of 15 cents per 100 pounds until the Interstate Commerce Commission has determined whether such increased rate is just and reasonable or unjust and unreasonable, but in the meantime the defendants will be fully secured in a bond to indemnify them for the difference between the proposed rate and the rate which they may collect.

Now, how will it be with the complainants if the temporary injunction is refused? They must pay the increased rate, which it is estimated will amount to about \$250,000 in one year. If it is finally determined that this rate is unjust and unreasonable they may recover of the defendants the amount so exacted. But what will be their situation or condition pending this determination? It appears from the evidence that the lemon growers can not pay the increased rate and market their crops in the eastern markets at a profit. They must go out of business if required to pay the increased rate. They will be compelled to destroy their lemon trees and put their land to other uses. This is a detriment and inconvenience in addition to, or rather aside from, the difference in rate. If the equities of the parties related only to the difference in rate they would be equally balanced and the temporary injunction would be refused. But there is evidence before the court that the equities are not so balanced. The complainants will suffer an irreparable injury by the increased rate not measured by the difference between that and the present rate, and this fact clearly balances the equities in favor of the complainants. Moreover, there is evidence that for some years prior to November, 1904, the present rate of \$1 per 100 pounds was an emergency rate established by the carriers to enable the shippers to meet the special conditions of the season and of the eastern market. But in November, 1904, after some negotiations between the parties, the rate was made a permanent rate, or at least the lemon growers so understood it, and thereupon, having faith that such permanent rate would be continued, they have enlarged the area of their orchards and increased their business upon that basis of this factor of expense. This rate has now been continued for five years.

The defendants deny that they ever gave the complainants to understand that the rate of \$1 per 100 pounds was to be a permanent rate, but I think the evidence furnished by the bill and supported by the affidavits satisfactorily establishes the fact that the complainants as a result of their negotiations with the defendants were given to understand that the rate of \$1 per 100 pounds would be a permanent rate upon which they could go on and develop this industry, and the fact that it has been continued for five years indicates that the rate was to be permanent.

Now, what has occurred since November, 1904, to justify the defendants in increasing the freight rate to \$1.15 per 100 pounds? There is some evidence that there has been an increase in the cost of labor, but this fact applies with equal force to the business of both parties. The entire cost of transportation is not, in fact, any greater. The services rendered by the carriers do not appear to be any more expensive as a whole than they were in 1904, if indeed they are as expensive now as they were then. Where, then, is the change of condition? Why the increased rate? It appears to be confined exclusively to the legislation by Congress respecting the tariff.

By the Dingley tariff act of July 24, 1897, the duty on imported lemons was 1 cent per pound. This duty was raised by the recent act of August 5, 1909, to 1½ cents per pound. This increase of duty appears to have been made upon representations to Congress that it was necessary to have such a protective duty to enable the complainants to sell their product in competition with the Italian or Sicilian lemons in the eastern market. It is represented that in Italy or Sicily the cost of labor in producing lemons is only 25 per cent of what it is in California and that the freight charge from Sicily to New York is only 25 per cent of the freight charge on lemons from California to New York. As, for example, it costs \$1 in labor to produce 100 pounds of lemons in California, while it costs only 25 cents to produce the same quantity of lemons in Sicily. The freight charge on 100 pounds of lemons from California to New York is \$1, while the freight charge on the same quantity of lemons from Sicily to New York is 25 cents. It was upon representing such fact to Congress that the duty was increased one-half cent per pound. It was increased because freight and labor are so much higher in



this country than in Sicily, because the cost of freight and labor in this country was for each \$1 per 100 pounds, and the cost of freight and labor for the foreign producer was for each only 25 cents per 100 pounds. Congress then had in view two facts justifying an increase in the duty on lemons. One was the cost of labor in this country and the other was the fact that the lemon growers in California were required to pay the railroad companies \$1 per 100 pounds for the transportation of their lemons to the New York market.

The purpose of Congress was to protect American industry. But does anyone suppose that Congress would have made such an increase had it been suggested, or even suspected, that the railroad companies would immediately increase their freight rate and appropriate a portion of this protection for their benefit. Manifestly not. The policy of imposing protective duties is for the benefit of the producer and to encourage home productions and home manufactures, and not to increase the cost of railroad transportation. Its ultimate purpose is to develop the country, encourage diversified industries, and save our markets for our own people on at least something like equal terms with the foreign producer. The wisdom of this policy is not a question for the judiciary. It is purely a legislative question. But when such a policy has been adopted and placed on the statute book the courts must give it effect when the issue is presented.

The facts submitted by the defendants in support of the proposed increase of rate are very interesting and make a plausible showing in support of their claim to a higher freight rate than that now prevailing, but I am not satisfied that they are entitled to share in the benefit of this particular increase in the customs duty. Perhaps, later on, when the industry of the lemon grower is firmly established and the market fairly equalized for the home producer, the defendants may properly increase the rate to correspond with other citrus fruits. But for the present the equity of keeping the present rate appears to be with the complainants until the subject can be investigated by the Interstate Commerce Commission. The complainants should give a bond in the sum of \$250,000, conditioned expressly that in the event a rate in excess of the present rate is determined to be just and reasonable the complainants will pay to the railroad companies the difference between the present rate and such rate as determined by the Interstate Commerce Commission. That, I believe, was the condition of the bond given in the Lumber case. Let a temporary injunction issue as prayed for in the bill of complaint.

(The committee thereupon adjourned until to-morrow, Tuesday, February 15, 1910, at 10 o'clock a. m.)



**HEARINGS**  
**BEFORE THE**  
**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE**  
**OF THE HOUSE OF REPRESENTATIVES**  
**ON BILLS AFFECTING**  
**INTERSTATE COMMERCE**

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**PART XVIII**

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**WASHINGTON**  
**GOVERNMENT PRINTING OFFICE**  
**1910**

**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,**

**HOUSE OF REPRESENTATIVES.**

**JAMES R. MANN, ILLINOIS, *Chairman*.**

**IRVING P. WANGER, PENNSYLVANIA.**

**FREDERICK C. STEVENS, MINNESOTA.**

**JOHN J. ESCH, WISCONSIN.**

**CHARLES E. TOWNSEND, MICHIGAN.**

**JAMES KENNEDY, OHIO.**

**JOSEPH R. KNOWLAND, CALIFORNIA.**

**WILLIAM P. HUBBARD, WEST VIRGINIA.**

**JAMES M. MILLER, KANSAS.**

**WILLIAM H. STAFFORD, WISCONSIN.**

**WILLIAM M. CALDER, NEW YORK.**

**CHARLES G. WASHBURN, MASSACHUSETTS.**

**WILLIAM C. ADAMSON, GEORGIA.**

**WILLIAM RICHARDSON, ALABAMA.**

**CHARLES L. BARTLETT, GEORGIA.**

**GORDON RUSSELL, TEXAS.**

**THETUS W. SIMS, TENNESSEE.**

**ANDREW J. PETERS, MASSACHUSETTS**

## BILLS AFFECTING INTERSTATE COMMERCE.

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES,  
*Washington, D. C., Tuesday, February 15, 1910.*

The committee met this day at 10 o'clock a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. Any gentleman, in reference to the interurban roads, may proceed.

### STATEMENT OF MR. LEWIS S. CASS, PRESIDENT OF THE WATERLOO, CEDAR FALLS AND NORTHERN RAILWAY, OF WATERLOO, IOWA.

The CHAIRMAN. You wish to be heard in reference to the provision in the Townsend bill (H. R. 17536) excepting interurban railroads from the operation of the bill?

Mr. CASS. Mr. Chairman and gentlemen, I will try to take up as little of your time as possible; but first I want to go on record as saying that I am thoroughly in accord and sympathy with the interstate-commerce law as it stands and as it is proposed to be amended in so far as giving the commission the right to establish through routes, joint rates, and joint classifications are concerned. Without this right a great many communities would suffer for the want of equal and fair freight rates, as between communities located upon short lines of railroad and communities located upon trunk lines of railroad. This I regard as equally true so far as waterways are concerned, and I don't think there is any question but what it is true so far as any railroad is concerned, regardless of what the motive power may be. I know a great many different interurban railroads throughout the country—in fact, I know of no interurban railroad in the State of Iowa, of which State I am a resident, that does not do what you might term a commercial railroad business; but yet in every sense, so far as their passenger business is concerned, they are an interurban electric passenger railway, and it seems to me they are a form of railway which you propose to exclude from the right of the enforcement of joint rates and through routes with steam-connecting carriers.

Most of the electric interurban railroads that to-day have joint rates and through routes with steam carriers, with a few exceptions, would be deprived of those rates as soon as they lost the power to enforce those joint rates, and to deprive them of those joint rates would deprive a number of communities from the equal chance at their markets with the communities located in adjacent and corresponding stations upon trunk lines of railroads that are dependent

upon the market town for their produce and wares, and an equal chance to ship their grain, live stock, and so forth.

In discussing this bill with different parties—I don't know just what is intended to be covered by excluding electric interurban passenger railways from those which the commission may order rates in connection with steam roads. It may be possible that I am taking up the time of you gentlemen unnecessarily, and that I am laboring under a misapprehension as to the intention of this bill, but it is so vitally important to the property which I represent and to the properties which are known as interurban railroads throughout the State of Iowa that to withdraw from those railroads their freight traffic and their right to through routes and joint rates would work a great hardship upon a number of communities that are served only by these interurban railroads and would, I fear, reduce the earnings of these interurban roads to such a low point that it would be impossible for them to operate as independent lines.

Mr. BARTLETT. You are engaged in the business of operating interurban roads?

Mr. CASS. Yes, sir.

Mr. BARTLETT. In the northwestern country and also in the eastern part of the United States; I am familiar with that; they handle a part not only of the interurban traffic and travel, but they carry passengers and freight; also sleeping cars, do they not?

Mr. CASS. Yes, sir; there are interurban roads that are running sleeping cars for passengers, and I believe that Congressman McKinley's roads down in Illinois run sleeping cars for passengers.

Mr. BARTLETT. How about freight?

Mr. CASS. The roads in Iowa transact the same character of a general freight business as any steam railroad in the State, excepting that they are not so long and do not reach the territory or do not reach the market towns; for instance, Chicago is the market town for the State of Iowa. The roads to and from Iowa built up by the steam railroad companies were built for the purpose of giving the steam roads the longest haul, and for the purpose of making Chicago the market town. These roads built their lines up to carry the products from Chicago to the people out in Iowa, and load their cars in Iowa with grain and live stock and bring them back to Chicago. Those roads originally were built for the purpose of moving traffic in that manner. The six trunk lines which cross the State of Iowa were so far apart that the markets became hard to reach by the settlers, so the people of Iowa have invested their money in right-angle roads, or railroads running across the State at right angles, communities have been established on those short-line railroads, and in order that those communities might thrive, they had to send their products to Chicago, the market town, and they had to receive from Chicago the wares that are sold at Chicago; and in order that they might receive those in competition with the trunk lines, or the communities located upon the trunk lines of railroad, they must have substantially the same rate as the communities located upon the trunk lines. Competition enforced that condition of those rates in the early days with the six trunk lines across the State of Iowa.

Mr. ADAMSON. Mr. Cass, I am not responsible for any part of this bill, and I have not been selected to explain any of it, but my understanding is that the reason for the exception of these lines is that

some of these railroads were not equipped to assume the responsibilities of the interstate commerce law, and that therefore they were to be exempt for awhile. Now you say that they are ready for it, and wish to be included in the provisions of the bill.

Mr. CASS. I say that the Waterloo, Cedar Falls and Northern Railroad, of which I am president, is ready for it, and is equipped for it. They considered themselves as subject to the interstate commerce law for two, three, or four years past, and have but recently submitted their auditor's office to a careful search on the part of the auditors of the Interstate Commerce Commission.

The CHAIRMAN. I think perhaps it would be well for me to read to the committee the provision that you have reference to. The provision which you are discussing in the Townsend bill is found on page 18, beginning on line 20, and reads as follows:

The commission shall not, however, establish any through route, classification, or rate between street, suburban, or interurban electric passenger railways and railroads of a different character.

Of course that only refers to the establishment, I judge, of the through route.

Mr. ADAMSON. It is doubtful whether it would be held to apply to his road at all.

Mr. CASS. That is the provision; yes.

Mr. ADAMSON. I mean as to whether the exception would apply to his road at all.

Mr. STEVENS. Have you had any conferences with the Attorney-General, or with the chairman of the Interstate Commerce Commission, who is somewhat responsible for the drafting of this Townsend bill?

Mr. CASS. No, sir.

Mr. STEVENS. Do you know whether or not that provision which was read was made with reference to your line, the lines in Iowa, Ohio, Indiana, or lines in New England controlled by the New Haven Road?

Mr. CASS. I do not. I have been unable to determine why that provision was injected in the bill.

Mr. BARTLETT. So far as passenger traffic is concerned, these interurban railroads, even in New England, are in a very considerable part used by passengers in traveling from one city and State to another, are they not?

Mr. CASS. Yes, sir.

Mr. BARTLETT. A man may go from New York to Portland, Me., on one?

Mr. CASS. Almost, I believe.

Mr. BARTLETT. He certainly can go from New York to Boston.

Mr. CASS. Oh, yes.

Mr. BARTLETT. And you think that those roads, having become, as you claim them to be—and doubtless correctly—now under the general terms of the Hepburn bill, and subject to control and regulation by the Interstate Commerce Commission, and this being a bill to amend or alter or increase the powers of the Interstate Commerce Commission, that they ought not to be specially excepted by being taken out from the general term of "railroads" conducting a passenger and freight traffic?

Mr. CASS. Yes, sir; that is just what I think.

Mr. WASHBURN. Your remarks would also apply, would they not, to lines 15 to 18, inclusive, on page 26 of the bill?

Mr. CASS. I don't see where that part of the bill can materially injure the class of railroads that I represent. If it is deemed wise to permit combinations on the part of electric railroads to be formed, and to permit steam railroads to use electric railroads as holding companies in consolidating steam railroads, I don't know that we can complain; but if I was the other fellow I would want that taken out, to be frank with you about it.

Mr. STAFFORD. What are the reasons for your advocating this being eliminated if you are in an opposite position?

Mr. CASS. I don't believe that the transportation in the arteries of commerce in this country ought to be so consolidated that they will be brought into too narrow a scope of management. I don't believe that our railroads and transportation companies ought to be controlled by a few people. I think that competition is necessary for the welfare of the business of the public along lines of transportation, not on account of rates, but on account of accommodations that competitors will furnish even at the same rates. That is why I say that if I was not in the railroad business I would not want the clause to remain in the bill.

Mr. WASHBURN. Do you think that the steam railroads and the electric railroads should be kept separate and distinct as competing factors in the transportation business?

Mr. CASS. Yes, sir; as much as steam railroads should be kept separate.

Mr. WASHBURN. As a matter of public policy?

Mr. CASS. As a matter of public policy; yes. I believe that to be for the best interests of the public.

The CHAIRMAN. Mr. Cass, to take a specific case, where an electric road has been constructed paralleling a line of steam railroad to within a few miles of a station in a large city, you want the law so that the Interstate Commerce Commission shall have the power to make the steam railroad enter into a joint rate with the electric road, and yet forbid the steam railroad from acquiring that electric road. The electric road would probably become practically a feeder of the steam railroad, and would not the facilities to the public be rather enhanced if the steam railroad should acquire the electric road?

Mr. CASS. I would have to answer that question by a little further explanation, if I may make it.

The CHAIRMAN. Certainly.

Mr. CASS. Let us take as an illustration the Elgin, Aurora and Chicago Electric Railroad, which goes to the city limits of the city of Chicago, and reaches a large population in the minor cities surrounding Chicago. Now, those cities use Chicago as their market town, the principal part of the business to and from those cities is to and from Chicago. But I don't understand that it is the intention of the Interstate Commerce Commission, or of the Government—the law-making power—to attempt to regulate state rates; that is, I don't see that this bill would affect the question of joint rates in that instance. It seems to me that that would be entirely regulated by the Illinois state commission and by these Illinois rates.

The CHAIRMAN. Let us see whether it would or not. That electric road is wholly within the limits of the State of Illinois, and it would

still be within the limits of the State in order to get into the city of Chicago. Suppose they should enter into an arrangement with you in Iowa for a joint rate from the west end of Iowa to the city of Chicago, wouldn't that compel them to make an arrangement by which they could carry passengers into the city of Chicago from Iowa?

Mr. CASS. That would be true as to the passengers, but the passenger rates are principally based throughout the country upon 2 cents a mile, and with the exception of where short-line rates are made, it is not necessary that joint passenger rates be ordered; it is not necessary that the commission be given permission to order joint passenger rates.

The CHAIRMAN. But that is what we are proposing to do, to give them that authority, and that is what you are advocating.

Mr. CASS. What I am advocating is principally freight rates. The question of passenger rates is not an important question in this at all, and if I am taking up your time on a question of passenger rates entirely, then I want to apologize, because I assumed that, of course, it would cover freight rates.

Mr. ADAMSON. As to that phrase "different character," as applied to those roads—that is, between roads of a different character, if the gauge is the same, the track and the coupling apparatus can be adjusted, and the braking system can be adjusted—what is the reason that they are not nearly enough of the same character as to make this arrangement feasible?

Mr. CASS. The only reason that I can assign to that is that the State of Iowa, through its supreme court, has declared that the railroad of which I am the president is an interurban railroad, and if the Supreme Court of the United States should hold the same thing, based upon the decision of the supreme court of Iowa, then we would be shut out under this bill.

Mr. ADAMSON. But this is an exception, as between your road and railroads of a different character, meaning the steam railroads.

Mr. CASS. Yes.

Mr. ADAMSON. Now, if that class of interurban street railroads that you speak of is, by their equipment—their physical equipment—sufficiently within the character of the steam railroads, what is the reason they practically are not in the same character?

Mr. CASS. They should be, and they are, as a matter of fact.

Mr. ADAMSON. If they have the same gauge, the same adjustable coupling arrangement, the same braking arrangement, what is the reason they are not sufficiently in the same character to be coupled on?

Mr. CASS. They are; but what the courts would say, as meant by this bill, should it be left with the present wording, is another matter.

Mr. STAFFORD. What is the character of your freight equipment on interurban railroads as to the gondola cars and the box cars?

Mr. CASS. The Waterloo, Cedar Falls and Northern Railroad owns 150 cars. Seventy-five of those cars are built under the Master Car-builders' steam road specifications, are interchangeable with any railroad in the United States, and our freight equipment comes and goes to the other railroads as freely as theirs go and come to our line.



Mr. STAFFORD. Is it the practice at present to interchange cars with other railroads without the necessity of transferring shipments to the connecting railroads at the connection point?

Mr. CASS. It is, so far as interurban railroads of Iowa are concerned. The character of the interurban railroads of Illinois I have not carefully investigated, but we have a number of interurban railroads in Iowa, and all of them transact a general commercial railroad business along the same line as the steam railroads, and in addition to the general commercial business they transact an interurban passenger railroad business. But in the instance of our company, and of other companies, they transact street railroad business upon the streets of some communities.

Mr. STAFFORD. Then the railroad carriers in Iowa send their own cars of freight over your lines?

Mr. CASS. Yes, sir.

Mr. ADAMSON. Then the only feature, it appears, in which the characters are different is that, while their engines could run on your tracks, your engines could not run on theirs because they haven't the electricity?

Mr. CASS. That is the point exactly.

Mr. ADAMSON. And is that material to the question of sending cars back and forth?

Mr. CASS. Not at all.

The CHAIRMAN. How many freight cars have you on your line?

Mr. CASS. Seventy-five cars of the master carbuilders' standard, and of that 75 cars 45 of them are interchangeable freight cars in the general line of freight business; that is, they go all over the United States, and at times they are gone for as long a period as two years before they come back to our line.

The CHAIRMAN. Forty-five freight cars; is that the total number of freight cars that you have?

Mr. CASS. That is the total of freight cars that we send out on other lines. We have six steam locomotives.

The CHAIRMAN. How many miles of track have you?

Mr. CASS. We have 50 miles of track that we operate as a commercial railroad.

The CHAIRMAN. You have a little less than a freight car to a mile, then?

Mr. CASS. Yes, sir.

The CHAIRMAN. Do you think that is a fair proportion, if steam railroads were to be compelled to interchange business with you?

Mr. CASS. I think it is a greater proportion than the average small steam railroad owns.

The CHAIRMAN. Less than a freight car to a mile?

Mr. CASS. Yes, sir.

The CHAIRMAN. Have you any information upon that subject?

Mr. CASS. I have looked it up; and I might say for your information, sir, that I have just retired as an executive officer of a large steam trunk line, and that I have come in contact with that situation in connection with the interurban lines and with the small steam railroads; and I know from experience that the average electric railroad which is attempting the business of commercial railroading is better equipped in nearly every respect to serve the public than the average small steam railroad.

The CHAIRMAN. Now, how many miles of electric interurban roads are there in the United States?

Mr. CASS. I should say about 38,000.

The CHAIRMAN. How many freight cars have they?

Mr. CASS. In the United States—I couldn't say offhand; I would have to look that up. Do you mean for the interurban roads?

The CHAIRMAN. Yes.

Mr. CASS. I should say that the interurban roads have not anything like one freight car to the mile.

The CHAIRMAN. Do you suppose that they have 3,800?

Mr. CASS. No; I should think not.

The CHAIRMAN. That would be less than one in ten. Do you think it would be perfectly fair to require the steam railroads to interchange freight with the interurban roads, the steam railroads to furnish practically all of the freight cars?

Mr. CASS. I think it would be just as fair as it is to require them to interchange traffic with water transportation companies.

The CHAIRMAN. That is the question. That question is to be discussed by some other people. What I wanted to get at was your view on this particular proposition.

Mr. CASS. Yes; I believe that it would be. I believe that it is perfectly fair, and the reason it is perfectly fair is this: That for eight months every year the steam railroad companies have standing on their sidetracks idle railway equipment, box and freight equipment, that they would be very glad to push out on the electric lines and receive their per diem of 30 or 20 or 50 cents, whatever it is—it has varied three or four times in the last three or four years, and I don't remember it now, but I think it is 30 cents per diem for the cars.

The CHAIRMAN. It is a pleasure to hear you say that, because we are so used to hearing shippers say that it is impossible to get cars for use over the railroads, and the railroads state that they are never able to furnish them because they can not get the money to purchase them with.

Mr. CASS. That is true at certain seasons of the year.

The CHAIRMAN. And yet at those seasons of the year you want to require them to turn their cars over to the electric roads, although the electric roads furnish no corresponding equipment for it?

Mr. CASS. No, sir. I do not want to require them to turn them over to the electric roads at all, if it is not to the interest of the steam roads, the electric roads, and the public; and if the car can not be taken out on the electric road and unloaded as quick or quicker than transferred at a junction point—

The CHAIRMAN. There is nothing in this bill to prohibit an electric road and a steam road making an amicable arrangement where it is to the interest of both of them. The question is whether we should force the steam road to turn its freight cars over to the interurban road for the benefit practically of the electric road, and although they furnish no corresponding equipment.

Mr. CASS. This bill is not alone for the purpose, as I understand it, of enforcing joint rates and through routes between trunk lines of railroad, but it is for the purpose of protecting the communities upon the short-line railroads that the trunk lines would not otherwise protect. I wish to call your attention to a complaint that has been very recently filed before the Interstate Commerce Commission, known as

the "Interstate Commerce Commission's docket No. 3080," in which the Tennessee Central Railroad, a small railroad in the southern part of the United States, complains because the Southern Railroad and the Illinois Central Railroad, their principal connections, are endeavoring to enforce an unfair settlement of a claim against the Tennessee Central Railroad, and are withdrawing and cancelling the through routes and through rates with the Tennessee Central Railroad Company, which has had the effect of increasing the rate to every community located upon that short line of steam railroad.

Now, if the Tennessee Central Railroad Company could not appeal to the Interstate Commerce Commission, where would the communities be? How would the communities be situated on that line of road, and how would they get protection for the money invested? Now, suppose the Tennessee Central Railroad were to string a trolley wire over the entire length of the line, but in every other respect to remain the same as it is now, why should the fact of that trolley wire being over the Tennessee Central Railroad deprive it of the right to protect itself, the shippers, and the public located along that line of road, by appeal to the United States Government for the purpose of rectifying things of that nature? Why should a railroad, because it has a trolley wire over it, and which furnishes more adequate service, both passenger and freight, switching and everything else, to the public located along its line, be deprived of the right of appeal to this tribunal of justice, you might term it, as between competing railroads? It is not for the purpose of enforcing through rates with trunk lines that this bill is being introduced, but it is for the purpose of protecting the small steam railroads. Why is not the small electric railroad entitled to the same protection if it transacts the same business?

The CHAIRMAN. You have a very different idea of the purpose of this bill from what I have. I have never heard the suggestion that you have made before, as to the purpose of the bill.

Mr. CASS. That is my understanding of the bill.

The CHAIRMAN. Oh, I do not say that you are not right.

Mr. CASS. That would be its operation most certainly.

Mr. RICHARDSON. The paragraph in reference to street railroads reads as follows:

The commission shall not, however, establish any through route, classification, or rate between street, suburban, or interurban electric passenger railways and railroads of a different character.

Do you want that stricken out?

Mr. CASS. I want to strike that out; yes, sir.

Mr. RICHARDSON. Don't you think to strike that out would give the great railroad systems a wonderful power over the electric railroads?

Mr. CASS. Leaving that would give them the wonderful power. If it is stricken out, whenever an electric railroad is in a position to serve a community commercially, then the community can make application for service, and if the steam railroad, the connecting line, refuses to grant that rate, we can appeal.

Mr. RICHARDSON. Do you think that the commission ought to have power to create through routes between the steam railroads and the electric railroads of the country?

Mr. CASS. The question of routing the car, the question of the character of the car, I don't see enters into it at all. It seems to me

that it is a question of ability; the construction, the character of a railroad's traffic, and the communities that are interested along the railroad. The question of rolling stock is another matter. An business that you move across this great country is not moving ill through cars. The Chicago, Burlington and Quincy Railroad every fall places an embargo on the railroad from which I have just retired as vice-president, a trunk-line railroad, and we were obliged to send our cars, our own cars, around to Omaha, standing alongside of the Burlington and transfer grain into our own cars in order to move it on to the market. There is no more reason why you should not transfer the shipment from the cars of the steam railroad to the cars of the electric road equally as well as you can transfer them from the cars of the steam railroad to the barges of a water line. But the communities located upon that electric railroad who are doing business—buying stock, shipping grain, doing the same character of business that is done on steam railroads—should not be deprived of the right to reach the market towns upon the same basis of rate as the man who is located upon the trunk-line railroad which was originally built through to the market town. That is the point, and that is the position we will find ourselves occupying if you leave that in the bill. And I know whereof I speak, because I have sat in the councils of the steam railroads for years in executive meetings.

The CHAIRMAN. What road were you connected with?

Mr. CASS. The Chicago Great Western.

The CHAIRMAN. That was a Stickney road?

Mr. CASS. Yes; I retired on the 1st of September, 1909.

The CHAIRMAN. That is the thorn in the side of the railroads?

Mr. CASS. I was one of the thorns. I have sat in the councils of trunk-line railroads while vice-president of the Chicago Great Western, and have been ostracized from good railroad society because I would not refuse rates with connecting railroads that were operated by electricity. That is what I have done, and I know whereof I speak. I know that if this clause is left in the bill the communities on the electric lines of railroad will suffer from lack of adequate railroad facilities and adequate rates.

Mr. RICHARDSON. If that clause is left in?

Mr. CASS. Yes, sir.

Mr. RICHARDSON. Simply because they have no place to appeal to?

Mr. CASS. Yes, sir. We have here the president of the Cedar Rapids and Iowa City Electric Railway, a road which runs from Cedar Rapids to Iowa City through Linn County, a county in which a small steam railroad of 19 miles in length has also been constructed, and he was obliged to appeal to the Interstate Commerce Commission in order to get through routes to the communities located upon his line of railroad, notwithstanding the fact that he has four or five inland communities that are thriving trading posts located upon the line of railroad, and the little 19-mile steam railroad, which only had half as many people located upon it, only cost half as much, and only furnished less than half as good service to the public, was granted through rates, and why I don't know; but probably because some fellow, somebody, told some hired man of the trunk-line railroad that he ought not to make rates on the electric railroad, and so they did not.

Mr. RICHARDSON. Your idea is that the same control should be exercised by the Interstate Commerce Commission over the interurban railroads as the steam railroads of the country?

Mr. CASS. Yes, sir.

Mr. RICHARDSON. And that the same rules and rates and regulations, and everything else of that kind that apply to steam roads should apply to the electric roads?

Mr. CASS. Exactly; precisely.

Mr. RICHARDSON. Then wouldn't you put into the hands of these great railroad systems, as compared to the electric railroads, overwhelming power and strength, and could not they absorb and destroy and break down these short electric lines?

Mr. CASS. I don't see how they can do it.

Mr. RICHARDSON. It would be the greater controlling the lesser.

Mr. CASS. But mark you, if an electric railroad has the earning power to pay its fixed charges and maintain itself in a healthy condition, then the only way the steam railroad can break it down is by buying up its stock and absorbing it. But if you place in the hands of the steam railroad the right to refuse to permit the electric railroad to enjoy through routes and through rates, and to draw the products that are along its line of railroad to the connection with the steam railroad who participates in the rates, then you have placed in the hands of the steam railroad a power of breaking down that electric railroad, or reducing its earning power, and of destroying its communities commercially.

Mr. RICHARDSON. It looks to me that the electric-railway system being apparently so absolutely different in so many material and physical manners, that if it is governed it ought to be governed on an entirely different system from the steam railroad.

Mr. CASS. Not at all. It is not the intention of this bill that the commission shall go throughout the country seeking places to make joint rates and through routes without complaint, but it is, as I understand it, the intention, and is the law at the present time, that the commission has the right to investigate the complaints, and if upon investigation they find that the carriers are entitled to be regarded as through routes with joint rates and the interchange of business already established, then why not leave it that way? That is all we ask. We don't ask you to do anything more to protect, but don't take anything away from us; that is all we ask. Leave us where we are.

Mr. STAFFORD. Have these electric railway lines in Iowa been equipped with freight equipment from the time of their organization?

Mr. CASS. Yes; all of the electric lines that are known as "interurban railroads" in Iowa were originally built for the purpose of transacting a commercial railroad business in addition to the passenger business.

Mr. STAFFORD. For what purpose do you use the steam locomotives on your line?

Mr. CASS. Largely in construction work, and opening the road of snow in the winter time.

Mr. STAFFORD. Do you use them at all in connection with the hauling of freight?

Mr. CASS. Yes, sir; at times when business is very heavy; at certain seasons of the year when business is heavy on the line of road. If we haven't sufficient electric equipment to care for the movement

of the business, then we put the steam locomotives in the service, either upon passengers or upon freight.

Mr. STAFFORD. Under your franchise you are permitted to use any kind of power in the propulsion of your trains, whether steam or electric or other motive power?

Mr. CASS. Under the city franchises we have no right to run steam locomotives upon the streets, but we own independent terminals for our commercial business; we operate freight houses, switching lines, and own a railroad built upon a private right of way reaching the center of the city of Waterloo, a town of 30,000 people.

Mr. STAFFORD. So where you operate your short lines it is virtually a railroad in all respects, with the privileges of operating by steam or any other motive power that you may elect?

Mr. CASS. Exactly so.

The CHAIRMAN. If you have an interurban road that runs through a town, or the main street, say, where the city council has granted a franchise under the state law for the conduct of passenger business, and the Interstate Commerce Commission orders you to make a joint rate with a steam railroad to carry freight business through that town, what would you do in that case?

Mr. CASS. I don't believe that the commission would make the order if the character of the road was such as it was not possible to comply with the order.

The CHAIRMAN. That is the question, whether it would not be possible—the power of the council over interstate commerce.

Mr. CASS. Well, sir I would have to refer you to a lawyer. I do not believe I could answer.

The CHAIRMAN. Take, for instance, the city of Chicago: There is the City Railway Company down town, and the City Railway Company connects with the South Chicago City Railway Company, which runs from Sixty-third street down into Indiana, thereby making an interstate road or connection. The City Railway Company down town is only authorized to carry passengers and mail, but supposing the Interstate Commerce Commission orders those two roads to form a joint route, the steam railroad in Indiana under this proposition to carry freight, what will be done? Or, must the commission, before making the order, ascertain the wishes of the city council of every town through which the road passes?

Mr. CASS. I think that the commission, before it makes an order, does investigate all of the circumstances surrounding the question involved. Now, of course, what the effect would be if the commission would make that order might, I suppose, be the same effect of any Government order that might be made affecting the rights of States and municipalities in States. That is getting me into the woods. I am not an attorney, so I don't know what the result would be.

The CHAIRMAN. Isn't it quite a common thing for cities to grant the right to a street railway company or interurban railroad company to run on the main streets for the purpose of doing a passenger business and not a freight business?

Mr. CASS. Yes, sir; that is very usual. Now, understand, I am not here advocating that all interurban railroads are able to transact a commercial railroad business in connection with the steam railroads.

The CHAIRMAN. No; but you are advocating a proposed law that shall give the Interstate Commerce Commission power to compel them to.

Mr. CASS. No, I am advocating the proposition that you shall not take away from the Interstate Commerce Commission the power that they now hold.

The CHAIRMAN. Oh, no; I beg your pardon; you go further than that. We are not proposing to take away any power the Interstate Commerce Commission now has.

Mr. CASS. It now has the power to order those roads, and is doing it.

The CHAIRMAN. It now does not have the power to order a rate anywhere where an existing joint rate exists.

Mr. CASS. Exactly.

The CHAIRMAN. That practically covers their case. But here is a proposition to give to the Interstate Commerce Commission a power to order a joint rate wherever it pleases, regardless of an existing joint rate, and the exception is only from that; so it is not the proposition to take away that which it now has, but a proposition affecting a power it is proposed to confer. The position to which you apply is that they may, after hearing or complaint, or on their own initiative without complaint, establish through routes, joint rates, and so forth. That is a change of the existing law, broadening and increasing the power of the commission, and the exception is to that.

Mr. CASS. Well, why discriminate?

The CHAIRMAN. I am not arguing the merits of this proposition; I am trying to get information.

Mr. CASS. Let me cite this (reads):

The commission shall not, however, establish any through routes, classification, or rate between street, suburban, or interurban electric passenger railways and railroads of a different character.

The CHAIRMAN. I don't think they ever have established through rates.

Mr. CASS. They have in the State of Iowa, and the president of the company who made the complaint before the commission sits here, and I testified before that commission in connection with the establishment of those rates, and the commission did establish the through route and the through rate under the laws as they now exist. This was done in connection with an interurban railroad and a steam railroad. The interurban railroad was the Cedar Rapids and Iowa City Railway, and its president is with us to-day. The steam railroad was the Chicago and Northwestern Railway, and Commissioner Clark is the commissioner who sat at the hearing.

The CHAIRMAN. The Iowa commissioner.

Mr. CASS. No, sir; Commissioner Clark, of the Interstate Commerce Commission.

The CHAIRMAN. Well, I say it was the Iowa commissioner. Isn't he from Iowa?

Mr. CASS. I think not. Is he?

The CHAIRMAN. Yes; a credit to the commission and a credit to the State of Iowa.

Mr. STAFFORD. I wish to direct your attention to the phraseology in the clause just read, and ask you whether, under the present phraseology, it would exclude that part of your electric railroad which is operated as a freight line. As I understand it, you have two differ-

ent characters of railroad in connection with the operation of your system, one where it is limited exclusively to passenger travel, where it goes through the cities, and another where you have a special franchise that gives you the privilege of operating it for freight purposes. In the latter instance this phraseology would not exclude this line from the jurisdiction of the Interstate Commerce Commission, because the phraseology, as I read it, is limited to interurban electric passenger railroads and not interurban electric railroads.

Mr. CASS. We, of course, as I stated before, have been declared to be an interurban railroad. That declaration was made by the supreme court of the State of Iowa.

Mr. STAFFORD. But this limitation applies only to interurban electric passenger railways, and not to interurban electric railroads, which have the privilege of operating both passenger and freight, like any other railroad.

Mr. CASS. But why not? The point comes back to me constantly: Why eliminate from the power of the commission the control over the electric railroads as the interests of the public demand?

Mr. STAFFORD. I understood you to contend that you did not wish to grant to the Interstate Commerce Commission the right to establish through rates over interurban electric passenger railways.

Mr. CASS. Yes; I do wish to grant them that right if the public demands, and if the interests of the public demand that that should be granted.

Mr. STAFFORD. I misunderstood your contention, then. I understood that you did not wish to confer jurisdiction so far as passenger rates were concerned, but you did wish to extend it for freight rates.

Mr. CASS. In my opinion—I may have misspoken myself, but to make myself clear I will make this statement: That, in my opinion, it is in the interest of the public that the Interstate Commerce Commission have such jurisdiction over all transportation companies that the needs of the public may demand upon investigation, regardless of the character of the motive power used, or regardless of the character of track it runs over, or whether it is a waterway or not. I believe that the interests of the public demand that.

Mr. STAFFORD. I don't think that this bill in anywise excludes from the control of the Interstate Commerce Commission those characters of railroads which are operated by electricity; for instance, the Long Island City Railroad, and lines out West, where they are operated by other than steam power, because they are included as railroads—as railroad carriers, but that an exception is sought to be made so as not to include exclusive electric passenger railways which are not engaged in freight carriage at all.

Mr. CASS. Conceding that you are right, of what benefit can that clause in this bill be to anyone other than the trunk-line steam railroads? I have not been able to see since I read that clause—

Mr. STAFFORD. I can readily understand the reason for a distinction between electric passenger railways, exclusively confined to that character of travel, and railroads which are engaged, whether operated by electricity or steam power, in both freight and passenger business. For instance, in my home city, Milwaukee, we have an interurban service, but there is no connection whatsoever in the operation of its passenger travel between it and existing railroads. It is a separate system entirely. There are no freight rates which are called upon to



be established in the interurban communities throughout the country over any territory which is on the line of the interurban railroad.

Mr. CASS. Taking that view of it, and assuming that that is true, suppose that it is to the interest of some community—suppose that later on some community finds that it is greatly to its interest to have a freight business done upon a portion of the Milwaukee interurban line. Does it do any harm that there may be a body of men who should have the right to review—

Mr. STAFFORD. I take a different position from what you do, to the effect that this phraseology in nowise excepts that line of railroads when it does do a freight business, because it is an electric railroad regardless of whether it is passenger or freight.

Mr. CASS. Assuming that it is an electric railroad, a great many electric railroads in densely populated communities are entirely satisfied to operate their roads in order that they may go ahead and keep out of the government regulation or control. Ordinarily the fellow that is afraid of government regulation is the fellow that is liable to do something he ought not to do. We are not afraid.

Mr. STAFFORD. I don't think there is really any dispute between us. I believe that the bill, as phrased, would give the Interstate Commerce Commission the authority to regulate, on through business, freight originating or dispatched on electric roads that do a freight business.

Mr. CASS. But you put a clause in here which gives the other fellow a mighty good fighting chance to keep them from doing it. If the Supreme Court of the United States should hold as the supreme court of the State of Iowa has held in our case, we could not do the business.

Mr. STAFFORD. You stated that you are not a lawyer, and of course it is a question of construction.

Mr. CASS. That is it exactly. If the United States court should hold as the state court of Iowa has held in our instance, then the Waterloo, Cedar Falls and Northern Railroad would be shut off from 40 per cent of its revenue; 40 per cent of the revenue of our road doing business in communities that have no other railroad. If it is not the intention or desire of the Government to interfere with that class of railroads, and if it is not intended that the mere fact of a trolley wire being strung over a track should not change the character of the railroad, the railroad that does the same character of business that the steam railroad does, and this committee sees fit to report a bill with an amendment so that that can not be misconstrued by the Supreme Court unless they construe it as to all railroads, then so far as our company is concerned, and so far as the interurban railroads of Iowa are concerned, we will be happy, contented, and satisfied. But I don't yet see why the Interstate Commerce Commission should not be given the right upon hearing, and upon finding the physical conditions of both the railroads equal in transacting business with the public, to transact that business if the public demands it.

Mr. PETERS. You expressed the opinion that steam railroads should not be allowed to own stock in interurban railroads. Do you think that prohibition should not extend to cases where it is allowed by the law of a State, or do you think that should be an absolute prohibition?

Mr. CASS. I think, on the broad principle of transportation, that consolidation in transportation, in competitive transportation, should

be prohibited wherever it is met and under whatever circumstances. I believe that the public demands that condition; that the public welfare demands it. But I don't know that I can exactly answer your question to a closer point than that. That would be considering questions of constitutionality and of rights of States to govern, and so forth, and I would not know just what to say as to that. But I believe it should be prohibited wherever possible.

Mr. RICHARDSON. If I understand you correctly, if this paragraph is left in the bill, that affords the steam railroads a much greater and a better and more efficient opportunity to crush the electric railroads than if it is stricken out?

Mr. CASS. Precisely so, and I think I speak advisedly, because I have gone through steam railroad practice from the position of a telegraph operator up to that of vice-president, and I have built an electric railroad.

Mr. ADAMSON. It occurred to me that possibly in making your lines a part of a through route there might be diverted some business from a trunk line, and it might diminish to some extent the revenue of the trunk line?

Mr. CASS. Well, I can answer that in this way: That during my administration upon a trunk-line railroad, directing the commercial affairs of that railroad, I made it a practice to encourage the building of electric lines, carriers, and connections, and I established with every electric line that was built along the line of the Chicago Great Western Railroad, while I was with that company, through rates and routes willingly, because I discovered that the benefit that the electric railroad brought into communities, the added prosperity, added a great deal more to the trunk-line business than it took away from it. It has never been the practice on the part of trunk lines, outside of the Chicago Great Western, to encourage the building of the electric lines, and the trunk lines have stoutly refused to make joint rates with electric railroads ever since I knew anything about it.

Mr. ADAMSON. They might be available as feeders, but if permitted to become undesirable rivals, the trunk lines would not think them so valuable.

Mr. CASS. I am perfectly willing to let the trunk lines take care of themselves, but I think the public demands that they have the through routes.

The CHAIRMAN. We have given you one hour, Mr. Cass, and we have some other witnesses here to be heard.

Mr. CASS. I shall be glad to yield whenever the gentlemen desire.

Mr. RICHARDSON. What is the mileage of the electric railroads of this country?

Mr. CASS. I should say about 38,000 miles.

Mr. RICHARDSON. What is the capital stock?

Mr. CASS. I should say about \$2,000,000,000. Gentlemen, I thank you very much for your kind attention.

**STATEMENT OF MR. WILLIAM G. DOWS, PRESIDENT AND GENERAL MANAGER, CEDAR RAPIDS AND IOWA CITY RAILWAY, OF CEDAR RAPIDS, IOWA.**

Mr. Dows. Gentlemen, I don't know that I have anything very much to offer in addition to what Mr. Cass has said, but from reading those few lines in this bill it does seem to me that that would be the means of withdrawing all through rates from interurban railroads.

There seems to be a misapprehension on the part of some members of the committee as to what is meant when we say "electric interurban railroads." I am president of the Cedar Rapids and Iowa City Railway, a line of railroad from Cedar Rapids, Iowa, to Iowa City, Iowa. It has its own freight terminals, both in Cedar Rapids and in Iowa City, which it owns. From these freight terminals it is built on a private right of way, 100 feet wide, and the rail and the construction is the same as of a steam railroad.

Now, we are perfectly capable of handling any and all kinds of freight in carload lots. The line bisects a quadrilateral, so to speak, which is formed by four roads; and we have towns on our line of road which are not served by any other railroad. In fact the nearest practical wagon route for one town is to Iowa City and Cedar Rapids, which would be 14 miles either way. We handle a great deal of freight, and when we built this road we endeavored to have the different railroads put in joint rates and through routes over our line, but they absolutely refused to do it. So we brought an action against the Chicago and Northwestern before the Interstate Commerce Commission, and after a hearing which was bitterly fought and went over a series of months, the commission ordered the rates put in, saying that we were able to handle any and all kinds of freight.

Mr. STAFFORD. What is the decision?

Mr. Dows. The decision of the Cedar Rapids and Iowa City Railway *v.* The Chicago and Northwestern Railway.

Mr. STAFFORD. When was it decided?

Mr. Dows. About a year ago; a little over.

The CHAIRMAN. Is that joint rate in effect now?

Mr. Dows. Yes, sir; but it is only in for two years, and the consequence is that if this bill passes they can withdraw it, and we do not think that would be fair; we have grain elevators, stock yards, and everything of that kind on our line of road.

Mr. KENNEDY. And you want these three lines stricken out?

Mr. Dows. Yes; I think they ought to be. What harm would it do to strike them out?

Mr. RICHARDSON. The commission would pass upon the road competent and qualified to do business and apply the through rate. You think that discretion ought to be left in the hands of the commission, and that it would not be left there if this paragraph should be left in?

Mr. Dows. Yes.

Mr. STAFFORD. Do you consider your line of electric railway an electric passenger railway, which is the limitation carried in this clause?

Mr. Dows. Now, the passenger revenue of the average interurban railroad is greater than the freight revenue. That is the reverse of

the steam railroads. For instance, on the Northwestern road, the passenger service is about 30 per cent of the gross and the freight service 70 per cent of the gross, and that is the reverse of the electric roads.

Mr. STAFFORD. The revenue does not determine the character of the railway, but the character of the service.

Mr. DOWS. The reason why our passenger revenue is greater than our freight revenue is the character of the service we give. We give an hourly service. We stop anywhere along the line and pick up passengers with our passenger cars. The consequence is that that continuous service that we give practically all day long, for twenty hours of the day, makes our passenger revenue really greater than our freight revenue, notwithstanding our freight revenue is as large as the average small road in the State of Iowa.

Mr. STAFFORD. I suppose no one can guess what the construction of the court would be as to what would be meant by "passenger railway."

Mr. DOWS. I don't think anyone could.

Mr. RICHARDSON. Is there not a very material difference between the construction of a steam railroad and that of an interurban railroad, in the character of the rails used?

Mr. DOWS. No, sir; the type of the rail on our road is the standard for steam-railroad construction.

Mr. RICHARDSON. I thought the rails were much heavier on steam roads.

Mr. DOWS. No, sir; we use the standard section rails, the same as the steam railroads use, and our bridges are the same; our wooden bridges are exactly of the same type and the same plan as those upon the Northwestern, upon the Milwaukee railroad, or upon any other road.

Mr. RICHARDSON. You do not carry as heavy freight loads as the steam railroads?

Mr. DOWS. We handle cars of 110,000 pounds, or 55-ton cars.

The CHAIRMAN. What weight rail do you use?

Mr. DOWS. We use the T rail, 70 pounds to the yard.

Mr. RICHARDSON. That is unusual, is it not?

Mr. DOWS. No; the Fort Dodge, Des Moines and Southern Railway is the same, and the interurban railroads of Des Moines, Iowa, has the same class of construction.

Mr. RICHARDSON. As originally constructed and intended, the road was built for passenger traffic, wasn't it?

Mr. DOWS. It is not, no; because the population is not dense enough, but that they have to depend upon the freight business in order to exist.

Mr. KENNEDY. Do you have freight cars that you permit to go off of your line and go to their destination to be unloaded?

Mr. DOWS. Yes, sir. We have tariffs over pretty near all of the different roads; we are in the different classifications, that is, of the trunk line tariffs, and we handle the standard equipment exactly the same. We have a physical connection in Cedar Rapids with the Chicago, Milwaukee and St. Paul and the Chicago and Northwestern, and at Iowa City we connect with the Chicago, Rock Island and Pacific.

Mr. RICHARDSON. Are you equipped with freight cars sufficient to meet the demands of traffic, or do you rely upon the steam railroads for those cars?

Mr. DOWS. We have some freight equipment of our own, but we have never found any difficulty in getting any amount of freight equipment that we want from the other roads.

Mr. RICHARDSON. That is where the steam railroads are complaining so much; about their cars?

Mr. DOWS. We have never heard any complaint; they have never made any complaint to us. These interurban railroads stand ready to buy the freight equipment whenever it becomes necessary.

The CHAIRMAN. Would you object to a provision in the bill that if you interchanged business you should provide your proportion of equipment?

Mr. DOWS. I don't think there would be any objection to that.

The CHAIRMAN. Are the interurban railroads generally financially able to purchase the necessary equipment?

Mr. DOWS. Yes; any one of them can buy them on what we call the car-trust plan.

Mr. ADAMSON. You are not to furnish cars for freight excepting that which originates on your line?

Mr. DOWS. Say you have a car from the Illinois Central, you can load that back to the Illinois Central line. I use that merely as an illustration.

Mr. RICHARDSON. Suppose the Illinois Central is the connecting link between two great railroad systems; if you carry out your ideas fully, a car loaded on one of the steam systems could pass over your road to the connection and you would not object to that?

Mr. DOWS. We would be glad to have them.

Mr. STAFFORD. What is the length of your line that is operated for freight purposes?

Mr. DOWS. We call it 27½ miles.

Mr. STAFFORD. How many freight cars is it equipped with?

Mr. DOWS. I think we have twenty-odd cars, and they are all standards.

Mr. STAFFORD. Have you any locomotives?

Mr. DOWS. No, sir.

Mr. STAFFORD. Under your franchise you are permitted to use that kind of power?

Mr. DOWS. We can use anything of that kind; for instance, last fall there was a big football game between the Agricultural College at Ames and the university at Iowa City—Iowa City is the university town. We did not have electric equipment enough to handle the crowds, so I rented from one of the large trunk lines a complete steam train, with a passenger engine—even the engineer and fireman were furnished—and we operated that over the line.

Mr. STAFFORD. How many freight cars are owned by the electric railroads in Iowa?

Mr. DOWS. I couldn't say.

Mr. STAFFORD. Can you give us the mileage of the electric railroads in Iowa that are engaged in freight business?

Mr. DOWS. I should say 200 miles. Wouldn't you say that, Mr. Cass?

Mr. CASS. Well, I should say between 200 and 300, but nearer 300 than 200.

Mr. STAFFORD. The franchise under which you operate is different from the franchise in some other cities in that you have the privilege of using any kind of motive power?

Mr. DOWS. Yes; under the laws of Iowa they make no difference between an electric railway and a steam railroad. They are all organized under the same laws. But wherever the railroad or railway corporation or anything of that kind appears in the code, it is made applicable to railroads—what they call interurban railroads. The statute first defined that an interurban railroad was a road that ran from one town to another whose motive power was other than steam. Then it made everything applicable to that.

The CHAIRMAN. What would you say to this proposition in reference to the issuance of stocks and bonds? Would it interfere with the construction of new electric roads if they should be required to sell their stock at par?

Mr. DOWS. Well, I think it would.

The CHAIRMAN. Do you want to come under the provisions of this bill?

Mr. DOWS. Well, we are willing to come under the provisions of the bill; we are willing to take our chances.

The CHAIRMAN. I know; still we would like to know the effect of the bill. You have two or three hundred miles of electric road in Iowa, and there ought to be a great field for additional roads there.

Mr. DOWS. There is.

The CHAIRMAN. It is not the custom of those roads to sell their stock at par, is it?

Mr. DOWS. If they can.

The CHAIRMAN. If we should prohibit them doing any other way, wouldn't it have quite a deleterious effect upon the construction of new roads?

Mr. DOWS. I think that any law which would prohibit the issuing of any stock only at par and the sale of any bonds only at par would stop the building of roads.

Mr. ADAMSON. Do you think they would pay any attention to any such a law if Congress attempted to prohibit it?

Mr. DOWS. I think they would have to if they did an interstate business, wouldn't they?

Mr. ADAMSON. I think not. I would not be alarmed about the matter if I were you.

Mr. DOWS. In speaking of the handling of freight down through the city of Chicago, I want to say that the Interstate Commerce Commission could not order anything of that kind.

The CHAIRMAN. Why not?

Mr. DOWS. Simply because they are not constructed to handle it, with switches and proper curves. You could not get a car weighing 100,000 pounds around a 50-foot radius curve.

The CHAIRMAN. But it would not be necessary to have a car of that weight. They have been trying to get that road in Chicago for years.

Mr. DOWS. It is strange that they can not do it.

The CHAIRMAN. They not only can get it through, but where they are permitted to do it they do do it. They could not handle a 100,000 pound car, perhaps, although their rails are a great deal heavier than the rails of any steam railroads in the country, and their track is better constructed than any steam railroad track on earth.

Mr. RICHARDSON. It is not true, is it, that all of these interurban railroads are operated in cities under the same character of construction as the steam lines?

Mr. Dows. I do not know of an interurban railroad in the United States that is built with less than a 60-pound T rail, whether it is used clearly for passenger, or for passengers and freight.

Mr. RICHARDSON. Then the public generally has a wrong impression as to that?

Mr. Dows. The public has understood that the interurban railroads are cheaper to build, and that it is a sort of imitation railroad, and cheaper to build than the old line. But I want to say that it costs more per mile to construct an interurban railroad than it does a steam railroad.

Mr. KENNEDY. As a rule the rails are heavier than those of the steam railroad?

Mr. Dows. I won't say heavier, but they are heavier than the branch lines of railroad, but not the main trunk lines, I would say. But they are built for high speed. The cars are expensive, and I do not know of any track that is not built after the approved steam fashion; that is, approved by engineers, and with anywhere from 2,640 to 3,000 ties per mile.

Mr. ADAMSON. Those local lines generally originate in local necessity, do they not?

Mr. Dows. Yes, sir.

Mr. RICHARDSON. Would you be willing to have a paragraph in here reading something along this line: "That the interurban railroads should be regulated and governed by all of the practices, rules, rates, and regulations that are applied under the law to steam railroads?"

Mr. Dows. Well; we are now making reports to the Interstate Commerce Commission.

Mr. RICHARDSON. But do you think that would be advisable as applied to the whole country; to regulate them all?

Mr. Dows. I think wherever they do an interstate commerce business they should. What difference does it make?

Mr. RICHARDSON. But they rarely do an interstate-commerce business.

Mr. Dows. They only tend to regulate the interstate carriage if they are a part in a chain of interstate commerce, so why not be regulated the same as the steam roads.

Mr. RICHARDSON. That would be making an exception of one where there are seventy or eighty that do not have interstate commerce.

Mr. Dows. They would not have to be regulated. They are intrastate not interstate. There would be no necessity.

Mr. ADAMSON. All you want is to strike out the exception, is that it?

Mr. Dows. I am afraid that with these three lines in the bill it will mean to check the building of the railroads of the kind of which I am president. Here is a town with a grain elevator, stock yards, and everything of that kind, and a town that has no other railroad connection except ours——

Mr. RICHARDSON. Why do you think if this paragraph is left in here that it will give the steam railroads great power to destroy and break up the interurban railroads?

Mr. DOWS. I know how hard they fought us; I know what they have done; I know they refused to put any rate in with us; I know that the passenger rate we had from Cedar Rapids to Iowa City was 65 cents and they went to work and put steam service on and hauled passengers for 25 cents.

Mr. ADAMSON. They were not as clever as Mr. Cass's road.

The CHAIRMAN. But his road went back into the hands of a receiver.

Mr. CASS. We lost our road by being good.

Mr. DOWS. They fought us; they would not put in any rates of any kind. Here were these towns, these communities of people that wanted to ship their stock, and they had to pay us the local rate either to Iowa City or Cedar Rapids and then the through rate from Cedar Rapids or Iowa City, instead of having a through rate from the point of shipment. Finally the Interstate Commerce Commission came in—

Mr. RICHARDSON. They withdrew the rate and they refused division?

Mr. DOWS. They did not give us the rate.

Mr. RICHARDSON. Would not agree with you at all; that is, they would not let their cars go over your tracks, and vice versa, or yours on their tracks. You appealed to the Interstate Commerce Commission, and they established a through rate for you?

Mr. DOWS. Yes; after a hearing that covered nearly a year, or more.

Mr. RICHARDSON. After this steam system had refused to recognize you as a commercial line, refused to let their cars go over your lines and yours over theirs, then the Interstate Commerce Commission acted in the matter and made them do it, and they saved you?

Mr. DOWS. It not only saved us, but it gave these communities through which we went the benefit of the through rate.

Mr. PETERS. What do you do now that you have it?

Mr. DOWS. It takes a long while to get the tariffs in and get them started. We are doing quite a business and it is growing every month. I should say that last year—I didn't bring the figures with me—but I noticed before I left home that we handled eighty-odd cars of stock in January for one thing, and fifty-odd of them went to Chicago. That went over 27½ miles of line.

Mr. PETERS. You stated that you had 70-pound rails. Have you determined the weight of the rails that you connect with?

Mr. DOWS. Seventy-pound.

Mr. PETERS. So you have practically have an electrically equipped steam railroad?

Mr. DOWS. Yes; we can and have used steam over it right along.

Mr. PETERS. Isn't there a line of distinction between an electrically equipped steam railroad which does an interurban business, and a street railway which does simply a local business, a passenger business, and a business the principal feature of which is on the highway, which does not have fares, which does not sell tickets, but simply picks up passengers along the line, the same as the old horse railroads?

Mr. DOWS. Yes; there is a difference, and the commission does not have to put in these rates, if I understand the law, I might say to the chairman. It says that they have a right to put in a rate where satisfactory, and where a through rate does not now exist. Now, my understanding would be, the physical ability to handle the business. Of course if a road is not physically able—



Mr. RICHARDSON. The commission can also, under this bill, initiate any rate it pleases upon any line of railroad?

Mr. DOWS. Yes; I think so.

The CHAIRMAN. You say that formerly you could not get joint rates with the steam railroads?

Mr. DOWS. No, sir.

The CHAIRMAN. And that after the passage of the Hepburn law you filed a petition with the Interstate Commerce Commission, and received authority to have a joint rate?

Mr. DOWS. Yes, sir.

The CHAIRMAN. I suppose you would consider that that legislation would naturally be desired by the people of Iowa, so that you could get these joint rates. Do the people of Iowa think that you ought to have the power to get a joint rate?

Mr. DOWS. I think they do. I know that everybody on our line does, and some of the farmers joined in the petition.

The CHAIRMAN. And in order to prove their desire to have a joint rate, they retired Mr. Hepburn from Congress—the one who made it possible for them to get the joint rate.

Mr. DOWS. Well, that was down in the Eighth District, and I live in the Fifth District. That is down on what we call the "Reservation." Those fellows are from Missouri.

The CHAIRMAN. Is there any difference of opinion out there on the subject?

Mr. DOWS. On the subject of what?

The CHAIRMAN. As to whether Mr. Hepburn ought to have been retired?

Mr. DOWS. I think he ought not to have been. I think that Pete Hepburn ought to be in Congress to-day, and I say that with all due respect to Mr. Jamieson, whom I know very well.

Mr. ADAMSON. Aren't your people waking up to the fact that it is better to elect any Democrat than even the best Republican?

Mr. RICHARDSON. And aren't your people dissatisfied and discontented about this tariff?

The CHAIRMAN. It was because the Hepburn bill was put through that the people at that time retired Mr. Hepburn—to show their dissatisfaction with him.

Mr. DOWS. You must remember that they had Colonel Hepburn's scalp once or twice before. He represented a district where they got his scalp before.

The CHAIRMAN. But Mr. Hepburn was fourteen years chairman of this committee and passed the Hepburn bill. He put through the law which you say was of great benefit to the State of Iowa, but which the people of his district say was not a benefit.

Mr. DOWS. I don't think that the people of Iowa are against that law.

Mr. WASHBURN. Is it in order to move that we strike all of this political discussion from the record?

The CHAIRMAN. No; because it is past, and is now in the record.

Mr. RICHARDSON. I think the reporter should be instructed to leave all this out, because it is only mere pleasantries.

Mr. KENNEDY. I would like to call your attention to the operation of an electric road. Do you know anything about the comparative economy of operating by electricity and steam?

Mr. DOWS. I never have operated by steam.

Mr. KENNEDY. You know something about it?

Mr. DOWS. I should say that the operating by electricity, upon a short line, is very much more economical.

Mr. RICHARDSON. Do you carry United States mail?

Mr. DOWS. Yes, sir.

Mr. KENNEDY. You have heard a good deal of talk about the steam railroads abandoning steam and equipping their lines with electricity, have you not?

Mr. DOWS. I believe there is a good deal of talk about that.

Mr. KENNEDY. The character of motive power is not a proper classification, is it, of carriers? Do you know that the gas engine, in business, is putting the steam engine out of business?

Mr. DOWS. It is doing a great deal of stationary work that the steam engine used to do.

Mr. KENNEDY. And the gas engine, in only a few years that it has demonstrated its utility, will probably supplant the steam locomotive?

Mr. DOWS. I don't know anything about that. I know that gasoline cars are being operated by a number of railroads over their branch lines.

Mr. KENNEDY. Then the gas, being exploded in the cylinder by an electric spark, would make it more of an electric railroad than a steam road, would it not?

Mr. DOWS. Yes; I suppose it would.

Mr. KENNEDY. Do you know of any steam railroad that is not a passenger railway?

Mr. DOWS. No, sir; I do not.

Mr. KENNEDY. And would come as much within this language as your road?

Mr. DOWS. I should think so. I don't know of any steam railroad that does not haul passengers and do a passenger business, and that is not a passenger-railway.

#### STATEMENT OF MR. W. J. FERRIS, OF LA CROSSE, WIS.

Mr. FERRIS. Mr. Chairman and gentlemen, I am in somewhat of a different position as compared with Mr. Cass and Mr. Dows, who have just finished, inasmuch as we are not operating at the present time. We have recently secured a franchise in the city of La Crosse and one in the city of Onalaska, and the city council of Galesville and also the city council of Winona, Minn., have under consideration franchises for the building of this interurban line. We have spent a good deal of money in the surveys and the preliminary work of organization and in complying with the laws of the States of Minnesota and Wisconsin. I am in hearty sympathy with the expressions of Mr. Cass and Mr. Dows regarding the lines on page 18 of this bill. In the building of these proposed lines we will tap a country that has no railroad facilities at the present time, no means of getting their goods to market excepting through and over the highways, which are quite hilly in that section, and we believe when we come into the city of La Crosse with this railroad the carload lots of freight from that upper section should have a through rate established for the markets of

Chicago and elsewhere. And it seems to me, and is my judgment as well as that of both Mr. Cass and Mr. Dows, that this clause referred to here is going to be a detriment to the working of our proposition.

There is little that I can say beyond that point, gentlemen, except that if that clause is what I think it is it will probably stop the building of this proposed line, even though we have gone quite a ways with it and spent a good deal of money, because we are relying upon the interchange of freight with the passenger roads.

Mr. STAFFORD. Under the franchise that has been granted are you privileged to operate your railway with any kind of power?

Mr. FERRIS. Not within the city limits of La Crosse.

Mr. STAFFORD. Outside of the city limits you are privileged to operate regardless of the character of power?

Mr. FERRIS. Yes, sir.

Mr. STAFFORD. So your road would be virtually a railroad operated by electricity?

Mr. FERRIS. By electricity, yes.

Mr. STAFFORD. What is the length of the proposed line?

Mr. FERRIS. About 36 miles.

Mr. PETERS. Isn't there a distinction between such a road and a strictly street railway?

Mr. FERRIS. Yes, sir.

Mr. PETERS. Wouldn't you say that there is more of a line of distinction between their general business than the character of the interurban and the steam railroad? Would you not say that the interurban railroad was more similar in general character and the province it had to meet in the way of traffic and rates, and so forth, to a steam railroad than a street railway, one entirely operated in the streets, and which did simply a local business, the carrying of passengers for one fixed fare, 5 cents or multiples of 5 cents, and did not sell regular railroad tickets? You say that there is more of a line of distinction between those two—that is, a street railway and an interurban railway—than between the interurban and the steam?

Mr. FERRIS. I think so.

The CHAIRMAN. Do you expect to issue your stock at par value and receive cash for it?

Mr. FERRIS. That is a question.

The CHAIRMAN. You have not referred to this bill as affecting that proposition; but if this bill becomes a law as it stands it would require you to sell your capital stock at par for cash.

Mr. FERRIS. If the bill becomes a law, I presume we will have to take our chances with it in every respect.

The CHAIRMAN. Why, there is no question about that; you would be like anybody else. Everybody will take their chance if the bill becomes a law. But what I wanted to get at is what effect it will have. In other words, we have not had presented to us this point of view: There is considerable rivalry between steam and electric roads in some portions of the country. The electric railroads are the ones that are mainly the new roads that are being built. What effect will this have upon the building of new electric roads and the attitude of steam roads toward the proposition which might prohibit the construction of new electric roads?

Mr. FERRIS. I don't know as to that.

Mr. KENNEDY. The electric road is now principally built by moneys received from bond sales, is it not?

Mr. FERRIS. In some instances; yes, sir.

Mr. KENNEDY. Practically all the finance for building a road is realized from the sale of bonds?

Mr. FERRIS. In the State of Wisconsin that does not apply wholly, for the reason that 20 per cent of the capital stock must be paid in.

Mr. KENNEDY. Of the capital stock?

Mr. FERRIS. Yes, sir.

Mr. KNOWLAND. You think that you would rather take your chances on being compelled to sell your capital stock at par than to have this paragraph remain in the bill?

Mr. FERRIS. I think if that paragraph remains in the bill and the treatment is accorded our company that has been explained here before the committee as having been given to the other roads that have been represented here that we would rather not build the road.

The CHAIRMAN. I might suggest to you that the provisions that you are objecting to have no relation to the proposition about the issuance of stock. The exception is not made in the section that requires that all companies shall issue their stock for par. Even if this provision that you object to should remain in the bill, you would still be required to sell your stock for par.

Mr. KENNEDY. Would it affect the sale of the bonds? You have had some experience in financing these roads, have you not?

Mr. FERRIS. No; not in the financing of interurban roads.

Mr. KENNEDY. But you know about it. Would it make it more difficult to sell the bonds if you issued a great lot of stock as practically a bonus to go with the bonds?

Mr. FERRIS. Yes, sir; it would make it more difficult.

Mr. KENNEDY. You might have to sell the bonds a little cheaper?

Mr. FERRIS. Probably so.

Mr. KENNEDY. The roads of the character that you speak of, through my section, have been built entirely by the sale of bonds. The stock represents franchises and one thing and another obtained in cities, but the money has been entirely received from the sale of bonds.

Mr. FERRIS. That is largely true.

Mr. KENNEDY. Do you think it would make it impossible to build this class of railroads if we should pass this bill requiring the stock to be sold at par?

Mr. FERRIS. It might possibly have a very serious effect on the building of the roads; yes, sir.

Mr. KENNEDY. But a few hundred shares of stock could be sold at par, and if you had the franchises and the charter from the State, why would not the bonds sell as well with only a few hundred shares of stock outstanding as though there were millions?

Mr. FERRIS. I should think they would. It simply is a question of dollars invested in the road, whether in stock or bonds.

Mr. STAFFORD. What you desire is to have, for your road, the interchangeable feature with the other railroads in through routings?

Mr. FERRIS. Yes, sir.

The CHAIRMAN. I will insert at this point a letter relating to express company franks, from Mr. T. B. Harrison, jr., who appeared before this committee.

(Following is the letter referred to:)

NEW YORK, February 14, 1910.

HON. JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

DEAR SIR: When I made some suggestions before your committee on January 28 as to a change in the present law authorizing express companies to issue and exchange franks, and also authorizing railroad companies subject to the act to regulate commerce to issue complimentary free transportation to the officials of foreign railroad companies and their families while traveling in this country, the committee very kindly gave me permission to hand in a memorandum showing the changes I suggested.

I did not have an opportunity to prepare such a memorandum before leaving Washington that afternoon, and I have been away almost continuously since, and have not, therefore, had such opportunity until to-day. I have taken the liberty of preparing an amendment to section 1 of the act which, I think, will put in effect the suggestions I made to the committee, if the committee consents to them, and I herewith inclose a copy of such amendment, on which the proposed changes are shown in italics.

I may say that the proviso authorizing common carriers to interchange free or reduced transportation of or for their officers, agents, surgeons, attorneys at law, and their families, is practically the exact language of the present New York law, and I have tried to guard this by providing that the transportation authorized to be exchanged shall be for the exclusive use or consumption of the person or persons to whom issued.

I may add that in almost all of the States which have adopted antipass laws within the last few years the laws have been broad enough to authorize express companies to issue and exchange franks, and that in several of those States in which the laws were not broad enough for this authority amendments have been passed giving such authority, notably in Alabama and Michigan.

I assume, of course, that the committee will recommend the passage of some general bill amending the Hepburn Act; and if so, and the committee agrees with the suggestions I have made on behalf of the express companies and the American Railway Association, I would respectfully suggest that the attached amendment, or some similar one, be put in as a section of the bill recommended by the committee.

Yours, very truly,

T. B. HARRISON, Jr.

That section one of the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended, is hereby amended to read as follows:

SECTION 1. That the provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment) from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "common carrier" as used in this act shall include express companies and sleeping-car companies. The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks,

and terminal facilities of every kind, used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid or in connection therewith shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

No common carrier subject to the provisions of this act shall, after January first, nineteen hundred and seven, directly or indirectly issue or give any interstate free ticket, free pass, or free transportation for passengers or property, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law, and their families; to ministers of religion, traveling secretaries of Railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes for disabled volunteer soldiers, and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge, and boards of managers of such homes; to necessary care takers of live stock, poultry, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, post-office inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks, and physicians and nurses attending such persons: *Provided, That this provision shall not be construed to prohibit the interchange of free or reduced transportation between common carriers of or for their officers, agents, employees, attorneys, and surgeons, and their families: And provided further, That the transportation of persons and property authorized to be exchanged hereunder shall be for the exclusive use and consumption of the person or persons to whom it is issued: nor to prohibit railroad companies subject to the act from issuing free transportation to officials of foreign railroad companies and their families, when traveling in the United States; nor to prohibit any common carrier from carrying passengers or property free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: Provided further, That the term "employees," as used in this paragraph, shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier, and exemployees traveling for the purpose of entering the service of any such common carrier; and the term "families," as used in this paragraph, shall include the families of persons killed while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars; and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an act entitled "An act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and any amendment thereof.*

From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

Any common carrier subject to the provisions of this act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate, upon reasonable terms, a switch

connection, with any such lateral, branch line of railroad, or private side track, which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, such shipper may make complaint to the commission, as provided in section thirteen of this act, and the commission shall hear and investigate the same and shall determine as to the safety and practicability thereof, and the justification and reasonable compensation therefor, and the commission may make an order, as provided in section fifteen of this act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders of the commission, other than orders for the payment of money.

(At 11.55 a. m. a recess was taken until 2 p. m.)

#### AFTER RECESS.

The committee met at 2 o'clock p. m., Hon. Irving P. Wanger in the chair.

#### STATEMENT OF E. M. TERRY, REPRESENTING THE NATIONAL LUMBER EXPORTERS' ASSOCIATION.

Mr. TERRY. Mr. Chairman, may I make a brief statement?

Mr. WANGER. Certainly.

Mr. TERRY. I represent some lumber exporters.

Mr. WANGER. What is your name?

Mr. TERRY. My name is E. M. Terry.

Mr. WANGER. Whom do you represent?

Mr. TERRY. The National Lumber Exporters' Association. I have particular reference to bill No. 16312, Mr. Mann's bill. In section 2, on pages 8 and 9, it provides that the local rate shall not be higher than the rate to the port on a through export shipment.

Mr. WANGER. What section is that?

Mr. TERRY. Section 2:

If any common carrier, etc., shall charge or receive a greater compensation on a shipment to a port of entry than a through shipment to the same port, to a foreign destination, etc.

That is in reference to receiving a higher local rate, as I understand it, than a rate on an export shipment through the same port. I really do not know the reason for the provision, but we merely wish to suggest that if it remains in it would be fair to the exporters to provide also that no export to the port shall be higher than the local rate. In other words, it should be equalized both ways. The provision as it stands is for the benefit of the local domestic shipper; but as I say, if the provision is retained we think it would be the proper thing to provide also that the export rate to the port should not be higher than the local rate.

Mr. ADAMSON. Are there ever any cases where the export rate is more than the local rate?

Mr. TERRY. Oh, yes; there are a number of cases. We have already presented a case to the Interstate Commerce Commission where a number of export rates are higher than the local rates to the port. As a matter of fact, I do not see where the question comes in

as regards the difference in rates, in the first instance, because the rates are not competing. The export shipment does not compete with the domestic shipment.

Mr. ADAMSON. I would rather have your proposition than this one, if we are going to have either.

Mr. TERRY. My proposition?

Mr. ADAMSON. Yes; I say I would rather put in your proposition than the one that is in the bill.

Mr. TERRY. Well, in our view there is no reason why there should be any difference in rates. That is, there is no reason why there should be a higher local rate than an export rate to the same port, and, as I say, we have already presented a case to the Interstate Commerce Commission on that very question.

Mr. WANGER. Does not the section as it reads relate to both exports and imports?

Mr. TERRY. Yes; but that does not touch the export feature as regards a higher export rate than a local rate. It only refers to where the local rate happens to be higher than the export rate.

Mr. ADAMSON. As I understand the gentleman, he is trying to prevent any rates from being cheaper than local rates.

Mr. TERRY. You see, there are two classes of traffic to the same port, we will say, for instance, to New York. The domestic shipment is delivered locally to a yard in New York City. That is one class of traffic. Another class would be where the shipment goes through to New York and is not stopped there, but goes on to a foreign destination. There are two rates, we will say, to the port of New York. One is the domestic and the other is the export rate.

As I understand it, this bill seeks to provide that the domestic rates to New York shall not be higher than the export rates. I really do not know the reason for it, but, as I said before, if it provides for that, it should also provide, in fairness to the exporter, that where an export rate to that port should happen to be higher than the domestic rate, the same rate shall be charged; that is, that the export rate should not be allowed to be higher than the domestic rate. That is the other side of the proposition. It is only one sided, so far as we can see, as it stands now. It is in favor of the domestic shipper.

Mr. STAFFORD. In the case you instance, is there a separate rate when the goods are to be exported from New York, known as the export rate, or is it a through rate to the point of dispatch in a foreign country?

Mr. TERRY. Well, there are really no through rates filed. Only the inland proportion of the through rate has to be filed.

Mr. STAFFORD. So at present there is in the tariffs a local rate from an interior point to New York, for instance, and if that character of shipment goes abroad there is a different rate for export business to New York?

Mr. TERRY. There may be a different rate. Now, in the case of shipments via the port of New Orleans, there are several different rates. I mean, there are several different cases where the export rates are higher than the local rates.

Mr. WANGER. You want the rates to be identical, whether the article is for export or domestic?

Mr. TERRY. We do not want the local rate to be higher than the export rate.



Mr. ADAMSON. It looks like this goes both ways and provides for all that. I am afraid it provides too much. The only thing that saves the commerce of this country from absolute destruction through the iniquities of the protective tariff is that the railroads have brought in goods at a lower rate to the interior of the country.

Mr. TERRY. Of course I am not speaking of the import traffic now.

Mr. ADAMSON. This applies both ways.

Mr. TERRY. Yes; but it does not cover the export-rate feature, as I have tried to explain.

Mr. ADAMSON. I think it does.

Mr. TERRY. It says that common carriers shall not charge or receive a greater compensation for the transportation of property, etc., between any point in the United States and any port of entry in the United States.

Mr. ADAMSON. Yes; than it would on a shipment through beyond the limits of the United States.

Mr. TERRY. Yes.

Mr. ADAMSON. Well, that is an export or an import rate.

Mr. TERRY. Yes; but that refers to the higher local rate, and it does not refer to a case where the export rate to the port happens to be higher than the local rate.

Mr. ADAMSON. I disagree with you, and I will vote against that whole section.

Mr. TERRY. As a matter of fact, we do not understand just the reason for the insertion of the provision, because, as I said in the first instance, the two classes of traffic are not competitive.

Mr. STAFFORD. I suppose the basis of your contention is that for the protection of our export trade the export rate should be at least no higher than the local rate?

Mr. TERRY. That is the idea, exactly. We have no objection to the provision as it stands as regards the local rate, but if it is retained there we see no reason why an amendment should not be inserted covering what this gentleman has just pointed out—that no export rate shall be higher than the local rate.

Mr. ADAMSON. I am with you. The imports and the exports go hand in hand and are generally averaged up in all periods. When you increase one, you increase the other. When you decrease one, you decrease the other.

Mr. WANGER. Have you stated all you wish to say?

Mr. TERRY. That is all, sir.

Mr. FAULKNER. Mr. Chairman, we are ready to go on now in regard to the minimum speed of 16 miles per hour. I only want to put on two or three gentlemen who are familiar with what we may call the "cattle roads"—the Atchison, Topeka and Santa Fe, the Burlington, the Chicago, Milwaukee and St. Paul, and the Union Pacific.

Mr. WANGER. All right, Senator. Will you call the first witness?

**STATEMENT OF D. L. BUSH, GENERAL MANAGER CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY.**

Mr. BUSH. Mr. Chairman and gentlemen, with reference to the proposed bill requiring a minimum speed of 16 miles per hour in the transportation of live-stock shipments, I wish to say for the Chicago, Milwaukee and St. Paul Railway Company, and I assume others are

in the same situation, it would be practically a physical impossibility to comply with such a requirement without a very large reduction in the train load.

In the operation of our trains a reduction of not less than 20 per cent is made for the train load of an engine handling a live-stock train as compared with the train load of the same class of engine hauling dead freight, and even at that we are not able to make what we consider fairly good time with live-stock trains.

Mr. RICHARDSON. Why does that reduction of 20 per cent occur?

Mr. BUSH. Why is it necessary?

Mr. RICHARDSON. Yes.

Mr. BUSH. For the expedited movement. Perhaps this will explain that much better: Taking any engine in service on our railroad, and we took as a basis what is known as our Class G 7 engine, which is practically our standard freight engine, a 10-wheel engine, it has a tractive power of 32,600 pounds at a speed of 10 miles per hour. Increasing the speed to 16 miles per hour gives that same engine a tractive force of 27,710 pounds, or a reduction in the train load of 15 per cent.

Mr. STAFFORD. Is your unit pounds?

Mr. BUSH. Yes, sir; the tractive power is pounds.

At a speed of 30 miles per hour the tractive force is reduced to 16,940 pounds, or a reduction in train load of 49 per cent.

In handling live stock on the Chicago, Milwaukee and St. Paul Railroad we have two classes, one known as range stock, which comes to the Chicago, Milwaukee and St. Paul road at a point on the Missouri River known as Mobridge. That stock comes to us in train lots of 18 to 20 cars and up to 25. We establish a schedule of forty hours to Chicago, a distance of 810 miles, which is twenty and a quarter miles per hour.

In the month of October, in handling 8,900 cars, the average time was forty-six hours, but on a schedule of forty hours, taking 10 trains just as they came, one after the other, they met with a resistance in their movement, due to passenger trains and opposing freight trains, of eight hours, reducing the actual running time to three and a half hours, making a speed of twenty-five and a half miles per hour, approximately. In the last part of the run, a distance of 9 miles from Western avenue to Union Stock Yards, we must have not less than two hours for the 9 miles. Through the other gateway we must have three hours for the 22 miles.

In handling the local business, it is assembled from different stations and from the branch lines and junction points. As an illustration, we would receive 5 cars of stock that came from a branch line, delivered at the junction with the main line to a through train. They would have but 5 loaded cars. We would have to go back to the point where the 5 cars were reached in picking up by the branch line, and figure on a minimum speed of 16 miles per hour from there to the yards. With 5 cars of stock we could make the time. We could make better than 16 miles per hour. I think perhaps with 5 cars we could average 25 miles per hour; but we would have to run so many stock trains with this very light tonnage that it would barely pay the wages and fuel consumed by the engine; that is, the

wages of the entire crew and the fuel and other supplies to run these long distances of 400 or 500 miles with 5 cars of stock.

Consequently, to reduce the cost of operation, that engine moves from the point where she first got the 5 cars and picks up until she gets a reasonable train load. If she is delayed in doing that, we make a further reduction in tonnage. In many instances we run 150 or 200 miles with 40 per cent of the train load, in order that the stock may reach the market in time. If it is there later than 8 o'clock, it is not considered available for sale on the day of arrival.

This local stock is offered to a concentrating point known as "Savanna," 128 miles out, a point where we deliver it or move our trains over another belt line. There are instances where there are 16, 18, or 20 of those trains following each other on a Monday morning. A slight failure that could not be anticipated in the engine of the leading train or in the engine of any of the following trains would set them all back to a point where those following would not be able to get to the market and meet the requirements of the law.

We have had no complaint from the shippers except in individual cases. There are instances where we would get, say, 20 cars of stock at a point on our Council Bluffs division, and there would be, perhaps, 3 other cars on the next freight district, 124 miles. We would undertake to have some local train gather up those 3 cars and take them to the division terminal, where they could be set into this 20-car train and then continue the run uninterruptedly, except trains that could not be expected to make reasonable time.

Now, on those we do receive complaint. Three shippers from different points would complain that their stock had to be loaded too early and were a long time on the road. That is literally true; but if the train having the 20 cars had been required to stop at these three different places, switch out the cars, and get them into the train, the whole 23 would have arrived late for the market, and probably would have been carried over until the following day.

We feel that any fixed minimum would hardly be fair to the shippers, as a whole, and not fair to the service; but it must be apparent to the stock shipper and to others that a well-managed railroad is only successfully managed to the extent that they are able to keep their cars and engines in motion. The greater extent to which that can be accomplished, the greater the reduction in the cost of conducting transportation, and the greater the earning capacity of your property.

These delays that occur have been claimed to be due to overloaded trains. I do not believe there is a western railroad that overloads a stock train except in cases of emergency. We have instances, which I will use as an illustration, where 20 stock trains arrive at Savanna, following each other, perhaps, on a schedule of five hours for 128 miles. Some engine in that group may fail. There is no other engine available that could be gotten to the disabled one or to take her place, and that stock may be divided up between the first three following trains. I can recall one instance of handling 46 cars of stock for the last 32 miles, which is the greatest number, with one exception, in a period of seven years of which I have personal knowledge. The average is 25. Thirty-five is the exception.

We are as much interested in the prompt handling of live stock as the owner, but the conditions at all terminals, where the stock must be finally delivered, all arriving there on two days in the week, or

practically all, make it a physical impossibility to expedite the service during the last 10 or 15 miles of the run. We have brought stock trains into Chicago and stood in line with the several other railroads as long as seven hours before our trains could be delivered at the stock chute. Of course in those instances the stock shipper complains very bitterly, and he has a reasonable right to complain; but when the conditions are known it is a matter over which nobody has any control except the stock shipper himself. They all go to the markets on Mondays and Wednesdays, and it is largely the western stock. The three largest stock-carrying railroads in the Chicago territory are the Chicago and Northwestern, the Burlington, and the St. Paul. There are instances when those three railroads on Mondays take in there as high as 2,000 cars.

Mr. WANGER. How rapid is the movement of stock trains compared with other freight trains?

Mr. BUSH. Taking the actual records on our railroad, barring the serious weather conditions of the past two months, the average speed of freight trains on the Chicago, Milwaukee and St. Paul, as a whole—it depends somewhat on the division—was not under 10 miles per hour, and up as high as 13. The stock-train movement is figured on the basis of approximately 18 miles per hour. On the movement from the Missouri River to the yards, taking the entire movement for the month of October, the average speed of our trains was 19 and a fraction miles per hour.

Mr. KNOWLAND. How fast do your fruit trains move?

Mr. BUSH. Well, slightly less than that.

Mr. KNOWLAND. Less than the cattle trains?

Mr. BUSH. Yes. The fruit trains are made up a little different. The fruit comes to us in a rather different form and shape. We get five to ten cars of fruit, and we will aim to put in that train enough dead freight to get to about 65 per cent of the carrying capacity or tonnage rating of the engine. But there is one thing in connection with the fruit trains, as a rule, that I want to call attention to. They move over a portion of the territory where the traffic is the most dense in the daytime. The stock movement passes over the dense traffic divisions during the night. I think you all know that the movement of any train is expedited with less energy during a daylight movement than after dark. The engine does a great deal more slipping. Enginemen as a rule have not the same confidence in a night movement, particularly in the handling of a freight train, as they have in the daytime, when they can see everything. That is perfectly natural. We all walk about ourselves with greater care in the nighttime than we do in the daytime. I have served in every capacity in the railway service, and I know that that is true so far as enginemen are concerned. There is something that causes the feeling that when it becomes dark and you are depending upon fixed signals, with the same train load and the same class of car you will not do quite as well.

Mr. RICHARDSON. It is not always attributable to engines. It is attributable to the employee of the railroad running the engine, is it not?

Mr. BUSH. To the man; yes.

Mr. RICHARDSON. It is not the fault of the engine, is it?

Mr. BUSH. An engine does more or less slipping on the rails; and our superintendent of motive power, who is here as a visitor awaiting his turn before another committee, I think will bear me out in the statement that the efficiency of an engine in that movement, as a rule, is somewhat reduced. Is that so, Mr. Manchester?

Mr. MANCHESTER. I would say so.

Mr. RICHARDSON. How can you account for that?

Mr. BUSH. You do not get the same adhesion with the rail from the moisture in the atmosphere. You use more sand to give your engine the tractive force applied. During the daytime, except in rainy weather or foggy weather, there is but very little sand used under the driving wheels of an engine to keep her on the rail so as to exert her power properly.

Mr. STAFFORD. In the average speed for your freight trains of 10 to 13 miles per hour, do you refer to the through freight trains?

Mr. BUSH. I take the trains as a whole. I take the average speed of the trains as a whole.

Mr. STAFFORD. What is the average speed of your through freight trains from Chicago to the Northwest?

Mr. BUSH. Approximately 10 miles per hour, the dead freight trains.

Mr. STAFFORD. Taking into consideration the average speed for stock trains, when formed exclusively as stock trains, and computing it from the time that the stock is received on branch lines, what would be the average rate for the entire distance, if you have that calculation?

Mr. BUSH. The basis upon which those movements are made is on 18 miles per hour, but it is not maintained.

Mr. STAFFORD. On the branch lines you do not maintain the same dispatch as after the train is once made up in a solid cattle train?

Mr. BUSH. Oh, no, sir.

Mr. STAFFORD. From Savanna to Chicago, all your cattle trains are solid trains?

Mr. BUSH. Yes, sir.

Mr. STAFFORD. What speed is maintained in that distance?

Mr. BUSH. The average for the entire month of October was 17.4 miles per hour.

Mr. STAFFORD. The average speed, as I understand you, before the cars are assembled at Savanna or any other point where you assemble the cars, is much less?

Mr. BUSH. Very much less; yes, sir.

Mr. STAFFORD. Can you give the committee any estimate as to what that average is?

Mr. BUSH. Well, perhaps I could give you an illustration. We have several branch lines leading to our main line, which extends from Chicago to Omaha. There are a number of branch lines leading to it across the State of Iowa. The schedule time of the freight trains on the branch lines is usually on the basis of 10 to 12 miles per hour. During the days of the week on which the stock run is heavy the speed will not average on that branch line more than 7 miles per hour. That is for this reason: A train will start, say, 56 miles from the main line—we have a case of that kind—and will probably pick up from 5 to 10 cars of stock. The train men assist in loading it. While the car may be right at the loading chute, the shipper is very anxious to

put his stock into the car at the very last moment, to get the best or the greatest time from the time shown on the waybill that the stock is loaded to reach the yards without unloading under the 28-hour law, or, if that is extended by written consent, 36 hours. They will wait until the train arrives at the station. The train crew will take the engine around to the stock car. Sometimes there may be two or three to load at that station, and only one can be spotted at the chute at a time. We furnish facilities for moving the cars by hand, but they are rather loath to do that. They do not want to get the stock into the cars and have it remain there fifteen, twenty, or thirty minutes and then be obliged to unload for feed, water, and rest in transit. The speed of the train on branch lines, when moving between stations, is 20 to 25 miles per hour, but from the time they load at the first station until they reach the point where it is delivered to the main line, the total time, and reducing it to the thought that the train is in motion all the time, will only give you 8 miles per hour, while between stations they may be running 25 or 30.

Mr. RICHARDSON. If you operate upon the minimum of 16 miles per hour would you be able to make up the time on the branch roads after you strike the main line?

Mr. BUSH. We do.

Mr. RICHARDSON. Do you make up the difference in the time you have lost?

Mr. BUSH. Not always. That is the difficulty with the proposition. We are compelled under this measure to maintain a rate of speed that will give us a minimum of 16 miles per hour from the point where we have gotten into the train five cars of stock and until it reaches its destination.

Mr. STAFFORD. Taking the solid train, where you average 18 miles an hour, what is the maximum speed that the train has to go in order to maintain it through the entire run, taking into account the delays that are encountered by going through terminals and cities and the like?

Mr. BUSH. Where the grades are in favor of the movement, a speed of 50 and 55 miles an hour is often made. We have stock trains that move from Savanna to Franklin Park, 128 miles, where we have reduced the tonnage to 20 cars, that have made that run in three hours and five minutes.

Mr. STAFFORD. Is there any competition between the stock-carrying roads running into Chicago for the traffic by reason of speed and other facilities offered to the patrons, to the stock shippers?

Mr. BUSH. I do not know that I am quite clear on that question. Do you ask if they attempt to make greater speed in order to secure the business?

Mr. STAFFORD. Yes.

Mr. BUSH. There is this about it. The railroads have gotten together a great many times with a view of undertaking to have this stock distributed over more than two days of the week. In that we absolutely failed. Other meetings have been held where it was suggested that we make a uniform schedule of speed. After such an agreement has been reached, and that has never been less than 16 miles per hour, after the stock has been assembled in train-load lots, then there has been a very honest and earnest effort on the part of all

the railways in the same territory to maintain the schedule, even at considerable loss in train loads.

Mr. STAFFORD. Has your company received any complaints from the stock shippers, complaining about the speed of the trains?

Mr. BUSH. No, sir. We have the individual complaints, as I mentioned to you here a few minutes ago, where the stock at two or three different points would be loaded earlier, to be taken to a division point, there to be put into the through train, and it is true that that stock would be loaded from an hour and a half, perhaps, to two hours earlier; but the 20 cars of stock, as illustrated, would suffer a delay in making those three stops, and if the time was pretty close to get to the market, the entire 23 would not reach there, but by having the three cars loaded a little earlier, the entire train load, the 20 and the 3, likely would all reach the market.

Mr. STAFFORD. What has been the effect of the operation of the 28-hour law so far as expedition is concerned while the stock cars have been in transit?

Mr. BUSH. Well, it has had the effect of reducing train loads somewhat to reach the market, to expedite the movement of the train. There are other instances where there are a great number of cars that are likely to require feed, water, and rest at yards that we have provided for that purpose, so great a number getting in there at so short a period that we have reduced the tonnage. In fact, we have made three trains out of two, and gotten those three trains in to make room for the balance that must be taken care of at the feeding point.

Mr. STAFFORD. Then, as a general statement, you can say that the expedition of live stock has been increased since the operation of the 28-hour law?

Mr. BUSH. I think it has had a tendency to increase the speed somewhat. I don't think it has improved the service any. The stock shipper, you know, is very averse to unloading. He considers it quite a loss.

Mr. WANGER. How long have you held your present position?

Mr. BUSH. I have been general manager of the road since October, 1, 1909. Prior to that, for seven years, I was general superintendent. I have been with the company thirty-nine years.

Mr. WANGER. How does the speed of stock trains at present compare with what it was ten years ago?

Mr. BUSH. Well, it is considerably better. It is more reliable. There were instances ten years ago where we had on our railroad during the entire shipping season an entire movement of live stock that would hardly amount to what we now move in thirty days. Live-stock trains ten years ago were handled by smaller power, in smaller cars. The congestion at the marketing center was very much less. The density of traffic was 70 per cent less than at the present time. A train could leave a point, say, 500 miles from the yards and meet passenger trains that were scheduled at a rate of speed that would permit of their taking the sidetrack to let the live-stock train pass them on the main line. Passenger trains have become so heavy and the demands of the public for faster time have become so great that it is quite out of the question to put passenger trains, through trains or local trains, on the sidetrack for our stock trains.

Then, again, there is the speeding of freight trains. A stock train ten years ago could leave Savannah on a single track—it is now a double-track line—and reach Chicago or Franklin Park, 128 miles, and the only stops that it would be necessary for them to make would be for coal or water.

In addition to that, in addition to the resistance due to heavier train movement, there are a great many other railroads that have crossed that line. At that time there was only one railroad crossing at grade. At this time there are not less than seven. At all those points the speed must be reduced, even though they are protected by interlocking plants and fixed signals, that the engineer may be able to stop his train if the signals are against him.

So that I think the rate of speed to-day, while the train is in motion, is 10 to 15 per cent greater than it was ten years ago. Then, again, with the small train, say with a small engine handling 20 cars of stock, and the larger engine handling 25, there is more chance, a greater risk of a coupling becoming separated. They have been strengthened a great deal, but in the hurry to get out of stations the effort to make quick and sure stops has its tendency to weaken those fixtures, and after several applications of air and stopping the trains we break a knuckle or a coupling pin. I think all the operating officers would say that the speed of trains while in motion between stations, except on the adverse grades, is much faster now than it was ten years ago.

Mr. KNOWLAND. What amount of stock do you carry, compared with other roads?

Mr. BUSH. We are the second or third largest stock-carrying road in the Northwest.

Mr. KNOWLAND. You have had, then, no general complaint as to the speed of your trains except in individual instances?

Mr. BUSH. No, sir.

Mr. KNOWLAND. You have had no complaints from the stock associations?

Mr. BUSH. No, sir.

Mr. KNOWLAND. And the complaints you have had have been from individual shippers?

Mr. BUSH. Individual cases.

Mr. KNOWLAND. Have there been many complaints from them?

Mr. BUSH. Very few.

Mr. KNOWLAND. As a practical railroad man, you are firm in the conviction that the sixteen hours could not be maintained on stock trains, are you?

Mr. BUSH. I am very sure that it can not be.

Mr. KNOWLAND. What speed would you say could be maintained?

Mr. BUSH. I do not think there should be any fixed now.

Mr. WANGER. The report of the solicitor of the Department of Agriculture for 1909 shows 39 cases, I think it is, as to the Chicago, Milwaukee & St. Paul, of penalties assessed under the 28-hour law.

Mr. BUSH. Yes, sir; I testified, I think, in eight of those.

Mr. WANGER. Is it not practicable to avoid those suits?

Mr. BUSH. Why, in answering that I believe I will have to say that if it was, we would not have violated the law. I will illustrate one of those cases to you. I testified in the case before Judge Landis. One of the cases was this: A car of horses was shipped from a station



called Neola, Iowa. He did not sign the request for an extension of eight hours, bringing it up to the 36-hour limit. When the train reached a station known as Kirkland, where we have small feeding yards, we had exceeded the time by about forty minutes. The conductor called his attention to it—that was without the extension of eight hours—and requested that he sign a request extending the period to thirty-six hours, which he did. We then failed to get it to the stock yards, due to the fact that when we reached Franklin Park there was an accident between there and the stock yards; but to do all that anyone could do, knowing that the track would not be clear for about an hour and thirty minutes, we took the engine of the train and the caboose, switched the car out and took it back to Kirkland. In getting back to Kirkland we exceeded the limit by thirty-eight minutes. He put in a claim for damages, which we promptly paid without any investigation. He then notified the government inspector of our performance in the matter, and we were fined. We pleaded guilty and accepted the fine.

In some of the other instances it was shown that when we got to Franklin Park we did not have sufficient time, according to the average time consumed in making those runs, to get to the yards. We had no other place, without going back to Kirkland, to feed the stock. So we left Franklin Park with the stock, knowing very well that we could not reach the yards inside of the time limit. I think during that same period all the western railroads were brought before the court.

Mr. WANGER. What is the distance between Kirkland and Franklin Park?

Mr. BUSH. I do not just recall, but I think I can figure it out in a moment. It is about 53 miles, as I recall it. We discipline our trainmen, yardmen, and station agents—every employee concerned in the handling of stock—for their failure to ascertain if there is sufficient time after reaching the first feeding point to make the delivery and keep within the law.

Mr. STAFFORD. Were there any exceptional climatic conditions that interfered with the delivery of the cars within the 28-hour limit in these cases you refer to?

Mr. BUSH. At the time mentioned; no, sir.

Mr. STAFFORD. You said the other roads had suffered the same way?

Mr. BUSH. They did, at the same time. I think the Northwestern road had several cases. Am I right about that, Mr. Morse?

Mr. MORSE. We had several during that same year.

Mr. BUSH. But it was during the same period. The Rock Island, the Burlington, the Northwestern, and our road had several cases; not that that is any excuse for the Milwaukee road. It is simply to show you that all of the lines were interested in the movement, and each one was making an honest effort; and, considering the amount of stock handled, we were very successful in meeting the requirements of the law.

I might add that in the majority of cases the delay was between the point where we leave the main line, and the handling of the stock over the belt line. We figure to use three hours. We have eight hours from Savanna to the stock yards. We unload and feed at Savanna, and then we attempt to make that first 128 miles in five hours, and the last 22 miles in three hours.

It was claimed in that case, and the decision distinctly stated, that the railroads knew of the possibilities to move promptly between Franklin Park and the yards, and, as far as our road was concerned, also between Western avenue and the yards, and that even though we had the allowance of three hours, which was a little more than the average time consumed by the roads in the given period, that would not excuse us.

**STATEMENT OF W. E. MORSE, GENERAL SUPERINTENDENT  
CHICAGO AND NORTHWESTERN RAILROAD COMPANY.**

**Mr. MORSE.** Mr. Chairman and gentlemen, as concerns the Chicago and Northwestern Railway, we agree with the position assumed by the Milwaukee road and others here that it would be an impossibility for us to in all cases average a minimum of 16 miles per hour with stock trains.

I will undertake to avoid repeating what Mr. Bush has said in regard to the reasons for that disability, and try and enumerate a few that have not been mentioned, for which the shipper himself is largely responsible.

We have a great deal of difficulty with the shipper in loading his stock promptly. For instance, you start a stock train out from the station with two or three cars. They have cars to pick up at succeeding stations. It is a very common occurrence for the shippers at those succeeding stations to be late in loading, and that holds the other stock. I have in mind cases where in Dakota and Iowa this fall our stock trains were held for two hours for shippers to trade stock. They would get to bartering their stock after the train would get there and trade for two hours before we could get that stock train started again.

**Mr. STAFFORD.** Do you recognize any practice whereby the shipper will hinder the running of the train under those conditions you have stated?

**Mr. MORSE.** We undertake to avoid it, but we do not always have an officer on the train. It frequently occurs, and I could enumerate cases in evidence, if necessary.

**Mr. STAFFORD.** What is the practice as to collecting these stock cars on branch lines, as to whether the cars have to be already filled before the train arrives?

**Mr. MORSE.** Our instructions to agents are that the stock must be ready before the train arrives, but we are not able to enforce those instructions.

**Mr. STAFFORD.** Why not?

**Mr. MORSE.** If you will pardon me, I will explain. As a matter of fact, there is no class of shippers on the railroad to which the railroads uniformly cater to the extent they do to the stock shipper, in every respect. Of course our instructions are to the agents that the stock must be loaded before the train arrives, but as a matter of fact we rarely run away from a car of stock if it is not finished loading, or if we have not started loading. Sometimes the stock is late in arriving. It may not be the fault of the shipper.

**Mr. STAFFORD.** Is that the same practice you follow as to dead freight? If a carload of dead freight is not ready, do you wait until it is ready for shipment?

Mr. MORSE. No; not at all. We do not wait for dead freight.

Mr. STAFFORD. Will you, then, explain why it is that you give this special consideration to the shipper of stock?

Mr. MORSE. Well, it is because the shipper is not always at fault, as I started to say. The man from whom he bought the stock may be late in delivering part of it. They very rarely buy a car of stock from any one farmer. He may have bought this stock to be delivered at 4 o'clock in the afternoon, and the bulk of the stock will be there; but there will be one farmer with a load or two, or a drove, late, and he has to wait until it gets there. The stock may be unruly. Very frequently there is a great difference, as any man who is familiar with loading stock knows, as to the loading of stock. You may load a car of stock in fifteen minutes, and it may take you two hours. It depends upon the stock. It depends upon the hour of the day. There are a great many things that the shipper has no control over that delay the loading of the stock and the movement of the stock that may be in the train at that time.

The other disability that the shipper is, we sometimes think, responsible for is the fact that they concentrate their shipments. Last Sunday night we brought into Chicago between six and seven hundred cars of stock. We have brought in 1,100 cars in one Sunday night, requiring from 20 to 25 trains to handle them. Out of 110,000 cars of stock delivered to the Union Stock Yards in one year, that I recall, 55 per cent of it arrived on Monday morning, 25 per cent of it arrived on Wednesday morning, and only 20 per cent the balance of the week. We handle about 160,000 cars of stock a year, and that ratio will hold good uniformly.

The result is that you have 35 or 40 stock trains, or from 25 to 40 stock trains, in a fleet. You have delayed passenger trains and mail trains that must be let by, and, despite any efforts you can make, you will have bad luck in some of those trains. We could not possibly make 16 miles an hour. Our stock schedules from the Missouri River to Chicago are based on a contemplated speed of 22 miles an hour. We make it with probably about 70 to 75 per cent of the trains. Our stock schedules in Iowa and in Illinois on the main line, the through movement, are based on about 20 miles per hour. On our branch lines, at which 75 per cent of our stock is assembled—and by branch lines I mean local loading; there is not over 15 or 20 per cent of our stock received from connecting lines; practically 75 to 85 per cent of it is loaded on the Northwestern rails—on the branch lines, where this stock is loaded, the time, excluding the stops, is about 17 miles per hour. Including stops it is about 8 or 9 miles an hour, and this stock comes in from these branch lines, as Mr. Bush has explained, in small lots, and it is absolutely essential for all the main-line trains to consolidate with these small lots.

Now, there is another point with reference to the tonnage. The average stock train on the Northwestern road is from 25 to 27 cars. In the last ten years our tractive power has increased with our locomotives 100 per cent, while our stock train has increased not to exceed 20 per cent. At the present time our stock trains average about 40 per cent, not to exceed 40 per cent, of the capacity of the locomotive. By the capacity I mean the dead freight capacity. I have some figures here which I will not take the time to read—

Mr. STAFFORD. When you mention the dead freight capacity as your basis, do you mean the capacity of the engine or the average capacity of your dead freight trains?

Mr. MORSE. The rating of the locomotive for dead freight.

Mr. STAFFORD. What is the capacity of the tractive power for dead freight trains?

Mr. MORSE. What I mean is this. If an engine in dead freight is rated at a thousand gross tons we would not handle over four to five hundred tons of stock.

Mr. STAFFORD. How much would you handle of dead freight?

Mr. MORSE. We would handle a thousand tons. You see, our dead freight trains in Iowa and Illinois will run about 40 cars. With stock it will run from 20 to 25 cars.

Now, it seems to me, gentlemen, that, as Mr. Bush stated, the railroads are more interested than anyone else to expedite this stock, because, as a matter of fact, they are very glad to get it off their hands after they get it. It destroys the movement of all other traffic practically. In some cases it takes precedence over passenger trains.

Mr. KNOWLAND. Has the speed been increasing or decreasing?

Mr. MORSE. The speed between stations has been increasing, but there is a point that Mr. Bush touched upon with which you are possibly not familiar. The introduction of safety devices, block signals, interlocked railroad crossings, and all those things, while they safeguard the operation of trains, retard the uniform movement of those trains.

Mr. KNOWLAND. Your road is double-tracked, is it not?

Mr. MORSE. It is double-tracked and electric-locked to Omaha.

Mr. KNOWLAND. You could make a greater speed than a single-track road?

Mr. MORSE. No; because the density of traffic is proportionately greater. Moreover, as I stated before, a railroad that is block-signaled and has interlocking plants and the more modern appliances has slower train movement between two given points. They will run faster between stations, but they necessarily must slow down for these signals.

Mr. STAFFORD. That is the rule for freight trains, but it is opposite in effect as to passenger trains?

Mr. MORSE. No; I do not think so.

Mr. STAFFORD. The same applies to both?

Mr. MORSE. I think so.

Mr. KNOWLAND. Have you had many complaints from shippers on your road?

Mr. MORSE. Only individual complaints.

Mr. KNOWLAND. What percentage of the stock carrying do you have?

Mr. MORSE. I think we rank first or second. As I said before, we handle 110,000 to 120,000 cars a year into Chicago. We handle a large amount in to Cudahy, in Omaha, and to Sioux City.

Mr. KNOWLAND. You have had no general complaint?

Mr. MORSE. No general complaint.

Mr. KNOWLAND. Have you had much individual complaint?

Mr. MORSE. No; this winter we have had considerable on account of the bad weather, but ordinarily we do not get very many complaints.

Mr. KNOWLAND. Have you had any complaint from the associations?

Mr. MORSE. No, sir.

Mr. STAFFORD. What is the character of these individual complaints?

Mr. MORSE. Oh, they would have complaints where the engine would fail, or they would get a car off the track, or it would be foggy in the terminals, and the trains could not move rapidly in the terminals, and the man did not make the market. We get a complaint usually when a fellow reaches a falling market, but we never get any when he reaches a rising market, no matter how late he is.

Mr. STAFFORD. The proponents of this measure complain that there are delays in transit whereby the stock trains on the branch lines would move only at the rate, sometimes, of a mile an hour, whereby the individual could walk faster than the train and help push it along. Are there any instances of complaints of that character brought to your attention?

Mr. MORSE. I never heard of them. If you will think a moment, under the agreement of the railroads with their organization, and most of the railroads have that agreement, there is a movement of 10 miles per hour required, or a penalty. They penalize the railroads when they do not make 10 miles per hour with their freight trains. They penalize them through their organization, the engineers, firemen, conductors, and brakemen. Therefore it behooves the railroads to strive to make at least 10 miles per hour.

Mr. STAFFORD. That penalty is not imposed when there are good reasons existing for not going ahead?

Mr. MORSE. Oh, yes; in every case.

Mr. KNOWLAND. They also complain that you sidetrack live stock for fruit trains. Is that so?

Mr. MORSE. Well, I have no recollection of that. I do not think it is true. The schedule on the stock trains, as a matter of fact, is higher than fruit trains, and we have many cases where there are stock trains run from Clinton to Chicago ahead of our passenger trains, with orders right ahead of the passenger trains, 139 miles.

Now, we have some delays of stock that were touched upon by Mr. Bush, I believe, but it is very pertinent. Our stock is delivered to the Chicago Union Stock Yards Company at Ogden avenue. There are several railroads that use these tracks in common. Their own trains, their own cars, and their own engines take the stock to the yards; but the Northwestern, or the roads that use these tracks, are not owners of the tracks and have no control over their operation. It is very badly congested there, particularly on a foggy morning. Mr. Bush stated he had known 2,000 cars to be brought in there on a Monday morning. I have known 3,000; and they will come in there in six or seven hours. The stock shipper objects to reaching Chicago or reaching any other terminal before 2 or 3 o'clock in the morning. He wants to reach there between 2 or 3 o'clock and 8 o'clock. He does not want to reach there at 11 p. m. or 12 o'clock midnight. That is too early.

Mr. STAFFORD. Why does he regard it as too early?

Mr. MORSE. He thinks it is a waste of time. The stock is unloaded, and the market does not open, you understand. I do not know that I could exactly answer that question.

Mr. STAFFORD. It is not as convenient for him personally as a later hour?

Mr. MORSE. That is it, but he will strenuously object if you deliver his stock to the market, the Union Stock Yards, before 12 o'clock, as a general proposition. The result is that all this stock is massed in a few hours. If it happens to be foggy and you have a hundred trains, all using the same tracks and all coming up and unloading at the same chute, you can appreciate that the movement is very slow. The trains proceed very carefully as there is very dense fog in that vicinity. There is no place I know of, except possibly London, that has worse fogs than Chicago. We allow four hours for the terminal movement.

Mr. RICHARDSON. As I came in the room a moment ago I heard you make some remark about the railroad being penalized?

Mr. MORSE. Yes; with their organizations.

Mr. RICHARDSON. For not running more than 10 miles per hour?

Mr. MORSE. For not making 10 miles an hour. All the western schedules are based upon the payment of 10 miles per hour.

Mr. RICHARDSON. That is applicable to the transportation of stock?

Mr. MORSE. No; to everything; to all freight.

Mr. RICHARDSON. Do you pay that penalty frequently?

Mr. MORSE. We have to pay it if we do not make it.

Mr. RICHARDSON. And you do not make it at all in stock cars loaded with stock on branch lines, do you?

Mr. MORSE. No; not as a general proposition, on branch lines.

Mr. RICHARDSON. Some gentlemen have stated here that under no circumstances could you make 10 miles an hour on branch roads, where they gather the stock chiefly?

Mr. MORSE. No; they can not. We do not.

Mr. RICHARDSON. And yet under the law you are penalized?

Mr. MORSE. Not under the law. You misunderstood me. It is an agreement with the labor organizations. It is called overtime. For instance, a crew going 80 miles will get 100 miles for it, or ten hours, based upon the 10 miles per hour. If they do not make that 80 miles in ten hours, you pay them 10 miles per hour for every hour over that. It is an agreement with the labor organizations, the engineers, firemen, conductors, and brakemen. It is not the law.

Mr. RICHARDSON. That has a bearing, then, upon the sixteen-hour matter?

Mr. MORSE. No; it has the bearing that the railroads are undertaking to make at least 10 miles per hour. There was a question asked that brought out that proposition.

Mr. RICHARDSON. I was not in here when you brought it out.

Mr. MORSE. Therefore the railroads are undertaking to make at least 10 miles per hour with all their freight, whether it is dead freight or what it is.

Mr. RICHARDSON. By agreement with the labor organizations?

Mr. MORSE. And they are penalized if they do not do that with the labor organizations.

Mr. RICHARDSON. You pay the labor organizations?

Mr. MORSE. We pay them overtime, when they do not make the 10 miles per hour.

Mr. STAFFORD. They do not pay the labor organizations, Judge. They pay the members of the crew.

Mr. RICHARDSON. I understand. You just pay the employees?

Mr. MORSE. That is all.

Mr. RICHARDSON. It would have no relation to switching engines gathering up stock cars and assembling them?

Mr. MORSE. No; nor on branch lines, under 70 miles.

Mr. KENNEDY. It is a rather important thing for us to know whether the speed could be maintained, whether that would be possible.

Mr. MORSE. As a general average, you know, we make with our full stock trains 16 miles an hour, but there are so many cases that come up where we could not make that time that to be penalized by a fine would be very burdensome.

Mr. KENNEDY. Sixteen miles an hour, as a general average on all your trains would be regarded as rather good practice, would it not?

Mr. MORSE. It would be too fast for the pick-up train.

Mr. KENNEDY. I am talking about the average.

Mr. MORSE. No; I do not think it would. For instance, the Northwestern road, which is one of the heaviest stock-carrying railroads, as I told you before, originates 75 to 85 per cent of its stock. Our Sioux City division will, on Sunday, load 200 cars of stock, on that one division, and it is a small division. Now, that stock is loaded on various lines, the Mondamin line, the Moville line, the Missouri Valley line, the Lake City line, and it comes into the main line of the Iowa division at Carroll in the Missouri Valley. That stock can not make an average of over 10 miles per hour on that division. When it struck the main line it would make 16 or 18 miles per hour.

Mr. KENNEDY. Then you think 10 miles per hour would be too high a minimum on that line?

Mr. MORSE. I would not say that. I do not think it is necessary. I really think it is unnecessary to establish a minimum. The railroads, as I said before, and I say that earnestly, have no class of traffic to which they give the attention that they give to the stock traffic, except the passenger and the mail.

Mr. RICHARDSON. In that matter of being penalized for not making 10 miles an hour, are you allowed any explanation for reductions by reason of accidents that are unavoidable and the work of God and storms?

Mr. MORSE. None whatever.

Mr. RICHARDSON. You have just got to come up and pay, anyhow?

Mr. MORSE. Yes, sir.

Mr. RICHARDSON. How long has that kind of agreement been in existence?

Mr. MORSE. Ten years. It will amount to from 5 to 10 per cent of the pay rolls of many of the railroads.

Mr. KENNEDY. You made a statement a while ago that I was surprised at. You said you thought these stock trains, keeping to the subject, could make as good time on these single-track roads as on the double-track roads.

Mr. MORSE. I think they can make better time in some instances.

Mr. KENNEDY. That rather surprised me. I supposed the meeting and passing of other freight trains would delay them.

Mr. MORSE. I know that is a surprising thing. I know the average layman and some railroad men who are not in the transportation department think a double-track railroad will move the trains more

rapidly than a single-track railroad; but usually they do not build two tracks until they have the traffic for them, and two tracks that are loaded to their maximum will not move the trains as fast as one track that is loaded to its maximum.

Mr. KENNEDY. That is, on the single tracks you can sidetrack your dead freight and give a clear road to the cattle trains.

Mr. MORSE. No; I do not mean to say that. I mean to say that on a single-track railroad handling half the stock, they would be able to make better time than a double-track railroad handling twice as much stock, provided the double-track railroad had other passenger trains in addition in the same ratio as the single-track road—twice as many. These passenger trains will block up and they have to pass them.

I do not know that there is anything more I have to say, gentlemen.

Mr. WANGER. We are very much obliged to you.

**STATEMENT OF W. L. PARK, GENERAL SUPERINTENDENT,  
UNION PACIFIC RAILROAD COMPANY, OMAHA, NEBR.**

Mr. PARK. I think, gentlemen, to save your time and to get at this quickly, I might give you a concrete case of the density of traffic and the impossibility of making 16 miles an hour net on a single-track railroad. These will be the actual conditions as they exist on one freight district of the Union Pacific Railroad, between North Platte and Sidney, 120 miles long.

We have scheduled on that district 2 fast mail trains, 3 overland limited trains, and a total of 18 mail and passenger trains. They are spread over the twenty-four hours, and you will observe that is an hour and fifteen minutes apart, if they are equally spread.

Mr. KNOWLAND. That is going both ways?

Mr. PARK. Yes, sir; there are 9 in each direction.

A stock train, under this proposed law, running 16 miles an hour would consume seven hours and thirty minutes. The train dispatcher, in order to protect himself and the road against the contingency of a delay occurring at the last end of the run, which might be caused by a hot box or something occurring to the engine, would need to establish a basic rate of 18 miles an hour. That is customary where you want to make a certain rate of speed. You will schedule the train a little bit faster to protect against a contingency at the end of the road, and, of course, having a fine or penalty staring you in the face, it would be done in this case. That would make your running time six hours and forty minutes.

Now, the federal law as to safety appliances requires a very rigid inspection of some 125 different parts of cars. We made on the Union Pacific a short time ago an actual test of how quickly that could be done, and 6 men employed consumed fifty-seven minutes and ten seconds in inspecting 8 cars. That for an average stock train of 32 cars would be three hours and forty-two minutes. Of course we do not make in that case the same rigid inspection. We, as I might say, sneak out of it and take our chances; but it would be fair to allow us at that district terminal, for changing the engine and caboose, this inspection, and the terminal delay naturally occurring there. That reduces your time to five hours and forty minutes.



Now, the American Railway Association is an organization that governs the practice of all the railroads in the United States. I think there are 230,000 miles of railroads represented in that organization. They have their own rule committees and other committees that prescribe good practices. That is very carefully gone over by other railroad officials in all parts of the country, and it centralizes in this American Railway Association. They say in order to operate a railroad safely, a freight train must clear a passenger train or a mail train a specified number of minutes.

If our stock train met only one-half of the passenger trains going over the road and let only one-half of them pass it, that would consume two hours and fifteen minutes, and you could very easily get a combination where they would meet a great many more trains than that, the passenger trains not being evenly spaced. That would reduce the time two hours and fifteen minutes, or three hours and twenty-five minutes on your schedule.

Then it would be very proper and necessary to allow twenty-five minutes for coal and water for the locomotive and a running inspection of the train which is made at the stations to see whether there are cracked wheels or other defects in the running equipment which might put the train in the ditch; and there under practically a minimum condition you have three hours actual running time on that 120-mile division, which is 40 miles an hour.

That is entirely too fast to run a freight train, and I think if such a rate of speed were attempted and maintained it would be injurious to the stock, particularly where you have a great many curves, throwing the cattle and sheep from one side of the car to the other and bruising them up.

On the Union Pacific we try to make an average of 20 miles an hour with our stock. We set that figure for our superintendents and dispatchers. We start at an elevation of about 4,000 feet at Ogden and ascend to 8,011 feet at Sherman, the summit of the Rocky Mountains. On that part of the road, which is about 500 miles, we prescribe a speed of 17 miles an hour. From Cheyenne to Omaha, on a descending grade, going down from 8,011 feet to about 1,000 feet, we prescribe a speed of about 23 miles an hour, which gives an average speed from Ogden to Omaha, which is approximately 1,000 miles, of 20 miles an hour; but it is impossible for us to make that time. We make it in a good many cases, and I could bring you a good many complimentary letters that we have received from stockmen of splendid runs that have been made. We do make some bad ones. We may have a combination of circumstances against us. It may be an opposing train, something the dispatcher could not foresee, a train in the opposite direction breaking down, and where he is handling a great many trains right up to the capacity of the railroad, before he can catch up with his work and readjust the schedule, this stock train may have suffered; and under such a law there could be no way we could explain that. We would simply have to accept the penalty. I have been connected with train service intimately, as a brakeman, conductor, assistant superintendent, superintendent, and general superintendent for thirty-five years, and I would be willing to stake my reputation, if I have any, as a railroad man that it would be utterly impossible to make a minimum net speed of 16 miles an hour.

Now, I think perhaps it would be entirely possible to make an average net speed throughout the entire season of 16 miles an hour. That might be possible. Some trains we would run 10 miles an hour under certain conditions. Others we might run 25 miles an hour; and I think it is quite probable that the figures thrown together for any of the roads would indicate an average of somewhere near 16 miles an hour.

Mr. STEVENS. Would it change conditions any—make you hurry up any—if we increased the penalties on you?

Mr. PARK. I think not, sir. I think we would just have to submit. The gentleman who just preceded me said they used every effort to get stock over the road. It is a preferred business with us. We have spent several hundred thousand dollars in the last ten years on the Union Pacific to provide special facilities in stock yards that are modern, up-to-date. We have spent \$40,000,000 to better our facilities in double tracks, sidetracks, and other facilities, all of which is in the direction of helping the stock trains, and our only complaints come from the congested main line and the single-track portions. I will say that we very promptly pay for any claims that we inadvertently or otherwise delay a train. There is no question about the settlement. The railroad company stands it. It is not the shipper. We have striven hard to avoid the penalties or to keep within the 28-hour law. I think since that law has been in vogue there have been fines imposed against the Union Pacific in 11 or 12 cases.

Mr. RICHARDSON. The stockmen are complaining more about the cattle suffering under the violation of the law which requires them to be unloaded every twenty-eight hours than they complained before, they say. Now, that is a fact. There is no doubt about that, because there is no provision made for any minimum rate of speed to be made, and you can run them twenty-eight hours and not go 10 miles. What suggestion have you to meet that complaint? That is a good complaint. The railroads are not required to make any particular rate of speed in order to reach a place where they can put the cattle off at the end of the twenty-eight hours. They can not keep them there longer than that unless special permission has been granted. How would you meet that defect, that complaint, and that trouble?

Mr. PARK. I think the 28-hour law has helped the railroads out of some difficulties.

Mr. RICHARDSON. And you put the cattlemen into others?

Mr. PARK. Yes. Out on the deserts of Wyoming we have some very poor water. At Laramie we purchased some 10,000 acres of grass land for the grazing of sheep, and we built the stock yards on the bank of the Laramie River. All of the stockmen made a special effort or request to get their shippers to that locality.

Mr. RICHARDSON. Under the 28-hour law?

Mr. PARK. Yes. If their man was at Rawlins, where there is practically no grazing, 118 miles east of Laramie, and he had six hours to go the 118 miles to Laramie, a choice place to unload, he would feel very much aggrieved unless we took him through. I think one or two of the cases where we confessed judgment and plead guilty were cases where in the middle of the night we were implored by the

stockmen to take them along to this particular station, Laramie, and we felt ourselves that it was humane and proper to take them to that locality rather than to try to get them out in the night, when it is difficult to unload them, and perhaps they would stand there at the stock yards until daylight before they could be unloaded, whereas by daylight we would have them at the favorite grazing ground, and they would unload easily. I am quite sure in those cases it was very much more humane to have gone an hour, perhaps, over the time and gotten them to that locality. I think one or two of these cases were occurrences of that kind. We confessed our guilt and paid the fine.

Mr. RICHARDSON. Would it occur often in the case of the transportation of stock in compliance with the law requiring you to unload them every twenty-eight hours that you would sometimes put them off at places that would be totally inconvenient and not prepared to take care of the stock?

Mr. PARK. When the law was first made effective, we had our disabilities in that particular, but we went at it very promptly, and at every one of our district terminals, 125 miles apart, approximately, we put in modern, up-to-date stock yards; but at such localities as Green River and Rawlins, on the desert, there is absolutely no grazing, nothing but sagebrush. We have good water. At Green River we have piped the water from the river to the yards, at a cost of fifteen or twenty thousand dollars. At Rawlins we have water piped 16 miles, from Fort Steele, at a cost of \$300,000. Of course, we use that for our locomotives, but that puts mountain water into the stock yards. Young lambs that are taken from their mothers and loaded on cars probably will not drink out of troughs in those localities. They will drink out of a running stream. The shippers handling stock that are so immature as the newly weaned lambs are of course anxious to get to a certain locality where they will drink; and if it is impossible to do that under the 28-hour law, I think it would be really inhuman to take them off before we got there.

Mr. RICHARDSON. Then the real situation is just about this, is it not, that now comes before the committee? The stockmen say, in effect, that the nonenforcement of the 28-hour law happens more than it ever happened before, and they come up and ask as a remedy for that that Congress, by this bill, prescribe a minimum rate of sixteen hours, so as to meet that. The railroad men say that is absolutely impossible, that it can not be done, physically nor otherwise, and that is about the situation.

Mr. PARK. That is the situation as I understand it.

Mr. RICHARDSON. That is the situation you bring to this committee?

Mr. PARK. Yes. I understand that the National Woolgrowers at Ogden indorse the sixteen-hour law. The Wyoming woolgrowers at Cheyenne had the same proposition presented to them, and they refused to indorse it, appreciating the impossibilities from the railroad view point. I understand also that while it was indorsed at Denver a year ago at the meeting of the National Stock Growers' Association, it was up again this year at a recent meeting, and they declined to indorse it.

Mr. RICHARDSON. Is it the humane society that is requiring this?

Mr. PARK. I understand the humane society have been brought into it, but I read the report of the hearings here, and Doctor Stillman's talk on Friday last, and I think he has not the right view point. Mr. McCabe, of the Agricultural Department, says he knows very little about it from a railroad view point, although his father is one of our pensioned engineers on the Union Pacific. He simply looks at it, I think, from a wrong view point.

Mr. WANGER. The American Cattle Association, at its annual meeting this year, adopted a resolution in behalf of conferring power on the Interstate Commerce Commission to determine a minimum rate of speed in moving live stock, did it not?

Mr. PARK. I understood that at Denver a year ago they had done that, but at the last convention, which was only two or three weeks ago, they did not. I may be mistaken about that.

Mr. WANGER. I think you are.

Mr. PARK. I may be. I know that one of the witnesses who appeared here on Friday is quoted in the hearing as having stated that such a resolution was passed in 1908. I presume from that that if one had been passed recently he would have referred to it.

Mr. KNOWLAND. You said you received several letters commending you for the expeditious manner in which cattle were handled. Have you received many complaints relative to delays?

Mr. PARK. We receive some complaints. We make some bad runs occasionally and receive some complaints. We always try to remedy them just as quickly as we can. We make the shipper good if he has lost anything on the market. We do not hesitate to straighten it out as quickly as possible. Complaints are not numerous. They seem to emanate from a particular class. I should say that they were those who bought stock and shipped them and sold on the other end. They are not the stock growers.

Mr. KNOWLAND. Speculators?

Mr. PARK. Yes, sir.

Mr. FAULKNER. How do the complaints compare with the number of shipments?

Mr. PARK. I have a telegram here from my office in reply to an inquiry by me. I left very suddenly at the request of the gentlemen in Washington, and I had no time to prepare for this hearing. The telegram says:

\*For the year ending June 30, 1909, the freight revenue from live-stock shipments amounted to \$2,534,000, or 7.67 per cent of total earnings. Of this, interstate shipments estimated about \$1,205,000, or 3.66 per cent of total earnings.

That means that the stock business of the Union Pacific road amounts to 3.66 per cent of all the freight business that we handle, and it shows quite clearly that to discriminate any more than we do now in favor of the stock would work an injustice to the large amount of business that, in a great many cases, is of equal importance.

I read here in the hearing the statement that fruit trains pass stock trains. That is not so. There might have been a disabled engine or some peculiar circumstance that would have caused a fruit train to go by a stock train, but as the gentlemen from the Milwaukee and the Northwestern roads have stated, and it applies to the Union Pacific, outside of mail and passenger trains, stock has the preferred movement. We very often endeavor to consolidate fruit and stock, because both are of a perishable nature, and run them on equally as

good time, but our stock trains move much faster than the fruit shipments.

Mr. WANGER. Mr. Gooding, of Idaho, stated to the committee that two years ago the distance from his place to Chicago was made in eight days, but that now it takes ten or twelve days to make the run.

Mr. PARK. I think that is a rather general statement. Four years ago I took an engine and one or two cars, and took Mr. Gooding and Mr. Nolan, of Chicago, a commission man, and one or two other stockmen—they were a committee of the National Wool Growers' Association—over the road for the express purpose of endeavoring to do something which in their opinion might help the situation—that is, to get the benefit of the opinion of these men as to what we should do on the Union Pacific to help matters. After going over the entire system, they saw our plans for the improvements in the stock yards and what we contemplated in the double tracking, and I believe it was their report that they could suggest nothing that was not being done on the Union Pacific. Upon the completion of these improvements they saw that they would have very little to complain of. We were out some two weeks.

Now, it is my impression that Mr. Gooding has had a very large number of good runs. He is a man that we generally look out for when he comes down over the road, because he always complains. He never misses an opportunity to complain, and if we can help it we do not lay him out, although I do not say we give him any particular preference over other shippers.

Mr. KENNEDY. You do not think it wise that we should attempt to fix any minimum rate of speed?

Mr. PARK. No; I think not. I think if the railroads are left unhampered and left to solve these problems as they are earnestly endeavoring to do, by double tracking, building additional yards, and facilities for handling the stock, the complaints will diminish in the West as they have in the East, where they have two, three, and four tracks upon which to operate the trains. The railroad building in the West has been very rapid. We have laid down a good many rails on contour lines and under conditions that were perhaps not the best; but the business necessities seemed to demand it, and we are now bettering those conditions. As I say, we have spent over \$40,000,000 on the Union Pacific, and the most of that between Omaha and Ogden on 1,000 miles, to better the conditions as they exist there. We have 40 per cent of it double tracked, and we have the rails and ties and all material ready to double-track the balance; but it is only a question of labor and our ability to work the steam shovels to get out the gravel when that will be accomplished.

Mr. KNOWLAND. You will double track the whole system?

Mr. PARK. From Omaha to Ogden; yes, sir.

Mr. KNOWLAND. That is as far as you run, is it not?

Mr. PARK. Yes. We have a line from Kansas City to Denver and from Denver to Cheyenne.

Mr. KNOWLAND. I mean west.

Mr. PARK. Yes; that is as far as we go west.

Mr. WANGER. Mr. Gooding said:

In the movement of stock from our western country down to the yards in Omaha the railroads have no competition; but at Omaha, where there is competition, our stock is transported from that point to Chicago at the rate of 20 miles, and yet on the Union Pacific they will drag on at 8 or 10 miles an hour.

Mr. PARK. He also stated further along in that hearing, I believe, that there was no double track between Chicago and Council Bluffs. The Northwestern is entirely double tracked. The Burlington is almost wholly so, and the Rock Island has a large amount of double track.

Mr. KNOWLAND. We have just heard that double tracking did not make any difference.

Mr. PARK. I did not state that. I think that Mr. Morse's point of view was that you could get so much business on a double track that you would have as much trouble as you perhaps ever did previously on a single track; but the same amount of business certainly can be handled much easier on a double track than it can on a single track. Is not that true, Mr. Morse?

Mr. MORSE. If you remember, my statement was that if a double-tracked railroad handles twice the traffic that a single-track railroad handles, the single-track railroad would get a train over the railroad faster than the double-track railroad, with twice the traffic.

Mr. KNOWLAND. They do not generally have the double track, though, without twice the traffic.

Mr. MORSE. No; that is what I said. They do not build the double track until they have the double traffic.

Mr. PARK. If the chairman will permit me, I would like to read some of the obstacles, other than those I have mentioned, that operate against the maintenance of the schedule. No. 1 would be temperature in mountain territory, cold weather; not extremely cold, but enough to slow up and make the wheels turn hard.

Mr. KNOWLAND. Is it more difficult to get up steam? I noticed, when I came east from California this year, we were about twenty-four hours late on the Overland Limited, and they claimed it was on account of the engine not being able to get up sufficient steam.

Mr. PARK. That perhaps was a boiler, or a mechanical failure, although I think there is more difficulty in maintaining the steam pressures at high altitudes than there would be in the low altitudes. At that time, perhaps, we had a temperature of 40° below zero at Green River.

Mr. KNOWLAND. It was very cold, I remember.

Mr. KENNEDY. Some one spoke a little while ago about engines moving less rapidly at night than in the daytime.

Mr. PARK. Well, that would depend on the engineer. I think, judging from our mail trains, where we get the highest speed, that the engineer sees less in the night time and perhaps runs faster than he would in the day time. His attention is not diverted. He is looking ahead. I have never noticed any difference except, perhaps, it might be in cold weather, when the temperature would fall very much during the night.

Mr. KENNEDY. A curious fact has been lately demonstrated in the manufacture of iron, that a blast furnace with the same fuel will make more iron in zero weather than in damp, warm weather. The moisture in the air seems to affect it.

Mr. PARK. No. 2 would be the heavy wind velocities, retarding opposing trains. That might be very difficult of explanation as to a particular stock train. The wind might be blowing from behind the stock train and still retarding it in that it would be holding trains moving in the opposite direction that would each, in their turn,

delay the stock train, but it would be a thing that would be almost impossible to account for from the train sheets later, where they might be looking for an explanation as to why the stock train lost ten or fifteen minutes at each one of these meeting points that it ought not to have lost.

The same thing would apply to minor accidents to opposing trains, causing unexpected delays to stock trains, brake beams coming down on a train, or hot boxes on the opposing trains.

We have this experience in the operation of the twenty-eight hour law as it is now. The consequent delays arising from trains in the opposite direction affect the stock trains in particular, but still we can not use that as an explanation, although it is there and we can not get away from it. The train is beyond the power of the dispatcher to give it further orders.

No. 4 is the failure of the telegraph line intermittently, causing delays in getting out train orders, caused by fogs, lightnings, and storms. That is very frequent. In the summer we have electrical disturbances in the high altitudes that will put our telegraphs out of commission for an hour or two, and it will perhaps come up again. We are installing a telephone, putting up two copper wires, through that territory from North Platte to Ogden, at a very considerable expense, a system of telephone train dispatching. We will have that completed in thirty days.

5. Failure of automatic electric signals, same causes as above, compelling trains to flag through blocks.

6. Drivers eating when trains would not be otherwise delayed.

7. Taking one or more cars to intermediate chutes to get stock up on their feet.

8. Rebidding at junction points with other lines.

9. Unloading part of a train for feed and rest, under the provisions of the present law, delaying balance of shipment that has time to go farther, causing numerous complications in adjusting the delays.

10. Waiting for drivers to get stock up on their feet while train is standing, and to get on the way car when the train is ready to move.

11. Speed restrictions of municipalities, some as low as 4 miles an hour.

12. Man failures—employees not responding to calls on account of sickness or for other reasons, causing unexpected delays in getting substitutes.

13. Stock trains bunching, delaying other trains at unloading points or getting through terminal yards.

There are a great many other delays of a similar nature that are bound to make the service erratic, indicating the folly of attempting to regulate the movement of stock by hard and fast rules.

These same climatic conditions affect the automatic electric signals, heavy lightning discharges or other climatic conditions putting the signals out of commission temporarily. I have seen signals that would hold a train ten or fifteen minutes. Under the rules the train stops at that signal and the brakeman goes ahead to flag and observe whether there is a train coming in the opposite direction and until he can see the next block so that it will be clear; and that signal immediately after that will resume its function, and nobody will know what caused it to stop.

Another cause of delay is drovers eating when the train would not be otherwise delayed. We find the drovers sometimes will at an intermediate station go over to the eating houses and get a warm meal there, and I presume they are justified in doing it; but we have to wait for them until they come back, and it might be thirty-five or forty minutes. Of course we could not explain that, and it would not be an excuse for not making this time, because we would probably be told to leave them there; but it would not do to leave them there, because they are necessary to keep the stock on its feet.

Mr. KENNEDY. When these complaints are made against you, does the commission have jurisdiction to excuse you from paying the fine?

Mr. PARK. Under the 28-hour law?

Mr. KENNEDY. Yes.

Mr. PARK. No, sir; I understand that those cases are all handled by the Agricultural Department inspectors, and they report violations to the Department of Justice, who bring the suits in the federal courts.

Mr. KENNEDY. If they report at all, then, there is nothing that justifies your failure to comply with the law?

Mr. PARK. We have our day in court. Inspectors of the Agricultural Department will find that we have exceeded the law, we will say, perhaps thirty minutes, some place. They have an inspector at each end of the district.

Mr. KENNEDY. They exercise some discretion as to whether to report at all or not?

Mr. PARK. Yes, sir; but if that law was literally obeyed, there could not a stock train move over a rail.

Mr. KENNEDY. I understand that.

Mr. PARK. Because it is not necessary for you to take the time from the time you put the first sheep on a train of, say, 35 cars you might have.

Mr. KENNEDY. You have been saying "That would not excuse us," as though there was vested somewhere a discretion to excuse you for failure to perform.

Mr. PARK. Well, I think that no one, perhaps, has the power to excuse the violation of the law; but they seem to have made rulings—some one has made rulings—and that is true of the instance I just cited. We are permitted to take the time from the time the last animal is in the train until the first one is out at the other point, the unloading point.

Mr. KENNEDY. It would make it easier for us to make some sort of workable law in this matter if there were somewhere vested power to hear your excuses and excuse you where you had a good excuse.

Mr. PARK. I think so. I think if that was possible that the law would work out much better for the shipper, the humane society, and the railroad. I think we could arrive at somebody in a certain territory with delegated authority to say, "that was right and proper; you should have taken those sheep over to this preferred water station, where they could get a drink, knowing that they would not drink out of the troughs where you did unload them, and that there was no grass there for them to eat." The inspectors would admit that that was a humane thing to do, and we would feel that it was a humane thing to do, and the stockman would be sure of it. But while the law is so rigid, it illustrates the unwisdom, I think, of mak-



ing a hard and fast rule. I fear that this proposed amendment would operate the same way; that we would be tied up more seriously than we are now, and I am very sincere in saying that we try to do the best possible with the stock trains, and I think all the railroads do that. This bugaboo about tonnage, there is nothing in it. We cut our tonnage to perhaps 50 per cent of capacity of the engine, to handle stock; but there is a time in the fall when it is absolutely necessary to haul as near a full train as we can in order to keep congestion from occurring on our road. It is a question of getting the business from the railroad, the very best business.

Mr. KENNEDY. If the Interstate Commerce Commission, the parties to whom these complaints are made, could in some way be vested with the discretion and given judicial power to determine whether or not it was a wanton disregard of the law, or the failure of machinery that no foresight could anticipate—

Mr. PARK. That is true of the safety-appliance law. I think it will be admitted by all railroad men that you could go out on any railroad and find these defects; but that law has been applied in a rational way, and the roads have been gradually getting better as to their care of such appliances, and they are touched up occasionally here and there to keep them in line. But I do not know what would happen if inspectors were put at every district terminal and kept there, and every violation of the law by the railroad was rigidly punished, because, as I said before, there are 125 parts in a car that come under the provisions of that law, and they are liable to work loose and fall off, and no human agency could keep them always in place.

Mr. FAULKNER. I would like to ask the witness whether it is not true that the courts have held that so far even as safety-appliance laws are concerned, there is no discretionary power at all, and the law must be enforced if the report is made?

Mr. KENNEDY. I understand that; but in the administration of the twenty-eight-hour law, have your cases been tried in the courts, or have you simply plead guilty and paid the penalties?

Mr. PARK. Well, we opposed the application of the law in a case in Wyoming. We took exception to the law in that we were not willfully negligent. Our dispatcher was a citizen of Wyoming, we claimed had been there fifteen or twenty years, a man that was of good habits, and he was a good man, just as good as any other citizen of Wyoming. He had the duty of dispatching these trains, and by something which was beyond his control they went over the twenty-eight-hour limit. We claimed that that was not a willful act on his part; that he had exercised due diligence and foresight. Nevertheless, the train was on the road more than twenty-eight hours, and Judge Rider decided in our favor. That was taken to the Supreme Court, and I believe he was reversed.

Mr. KENNEDY. Yes. Now, suppose that we should provide in this law that you might plead in mitigation of damages, if not in justification, any excuse that you might have for failure, and fix a reasonable minimum.

Mr. PARK. Well, as I said before, I do not believe that a minimum would be necessary. I fail to understand how anybody can believe that the railroads are not trying to use this stock the best they know how.

Mr. KENNEDY. When passenger trains are frequently coming in, where no one suspects the company's genuine effort to get its passenger trains in on time, it is no unusual thing for a passenger train to be six or eight hours late. It may be unusual, but it happens on every road.

Mr. PARK. Yes; that is true, and there are innumerable reasons for that. A train may run on its schedule very uniformly for several months, and then have an epidemic of causes that would sacrifice the schedule; and that would be true of the stock trains. You might go along successfully and comply with this law for a long time, and then have an epidemic of trouble that would give you a lot of fines.

Another thing that has not been taken into consideration is repairs to the track. We frequently have broken rails, and repairing ballast, and slow orders; every railroad will have them sometimes, and they operate to slow the trains. But the work has got to be done. Then there will be seasons of the year when the track will be clear and there will be no work orders, and you can make better time under those conditions.

Mr. WANGER. What is your train schedule for stock trains on the main line?

Mr. PARK. The bulk of our stock runs during the three months of the year, August, September, and October, and the trains are not scheduled in the time-tables for the reason that we will have 10 or 15 stock trains one day and only 2 or 3 the next, and it would be impossible to handle them on a regular printed schedule; but the train dispatchers handle them as extras, the same as other freight trains, inferior only to the passengers. As I said at the opening of my remarks, on the Union Pacific we have set 17 miles an hour from Ogden to Cheyenne, and 23 miles an hour from Cheyenne to Omaha. Cheyenne is about half way, so that it makes an average of 20 miles an hour; but we are not able to make that. I presume our trains during the entire season would average somewhere around 15 or 16 miles an hour.

Mr. STAFFORD. What is the reason that makes this traffic exceptionally heavy during the three months you mention?

Mr. PARK. It is the range cattle. They have been held on the good grasses all the summer, and they are ready with the feeders of Nebraska and Iowa, and the grass is beginning to dry up so that they are loaded on the cars in the fall and taken to the feed lots; also, the sheep that they do not intend to hold over the winter of course they want to get rid of during the fall, and it is a grand rush, and if the railroad company could or would furnish the cars I sometimes think they would go out all the same day. It is their protection or salvation that we take some little time to get the cars back; and in that connection, on the Union Pacific 40 per cent of our stock car movement is empty movement, cars returning empty for the stock, and we get a little over 12 tons in a stock car, and our average for all cars is a little over 20 tons.

That is all that I have to offer.

Mr. FAULKNER. There is one more gentleman, who will not delay you by an argument, but who has some notes prepared that I would like him to file with the committee, if that is satisfactory.

Mr. WANGER. You may give them to the reporter.

**STATEMENT OF MR. D. E. SPANGLER, SUPERINTENDENT OF  
TRANSPORTATION, NORFOLK AND WESTERN RAILWAY, ROA-  
NOKE, VA.**

Mr. SPANGLER. Mr. Chairman and gentlemen, I had prepared this memorandum from which I had expected to make some remarks, had time permitted, but if you will accept it in the way I have it here, I would like to file it as bearing in a general way on the line of the talks we have heard here from railroad representatives, and as illustrating some of the conditions under which our road operates. I would like to read from it this much. I stated in that memorandum that we are not a stock road in the sense that the western roads are stock-carrying roads. We originate quite a little live stock, cattle, and sheep, in southwest Virginia, and move it during the early fall months. October is our largest month. About 4,000 cars a year pass to the east from Roanoke. Last October the movement was something like 1,300 or 1,400 cars. To give an illustration to reflect our average conditions as to movement, I took a list of some trains we moved, beginning about the 15th of September, as being an example of our most favorable average conditions, having just passed away from the free-line movement at the beginning of the season and not having entered into the heavy movement of October, in which month we are in good shape to run solid trains of stock.

One train that I selected for detailed movement is a train leaving Roanoke on September 24, having 33 cars of live stock, which originated at 13 stations. This stock sustained at the loading point, before it got in the cars, delays running from twenty minutes up to about two hours and fifteen minutes, and in two cases it was four hours, and four hours and twenty-five minutes. Those two long-time cases were where stock was loaded in the early part of the evening, at about 7 o'clock, and could not move by the train, which the shipper knew was going to take it, until about 11 o'clock at night. That accounts for the long delay there. This stock, not counting the time lost at the starting point after being loaded, moved after being put in train to Roanoke at the average speed of 7 miles an hour up to a little over 12 miles. After they get to Roanoke, for the long run of 239 miles to Hagerstown, the gateway for the eastern markets, trains make fairly good time. It is a single-track railroad through a mountainous country, but its physical condition is away above the average, and good speed can be made, and fast time on some parts of it can be made. This train that I have in mind made a fraction over 19 miles an hour from the time it left Roanoke until it got to Shenandoah, the first division point. It was at Shenandoah an hour and fifteen minutes, changing engines, inspecting cars, and getting ready to proceed. From Shenandoah to Hagerstown the average speed from the time of starting until it arrived at destination was a little less than 19 miles an hour. To get that high speed between terminals after having encountered the delays of meeting trains, opposing trains, and the other incidents that are encountered in single-track movement, or in any train movement, the speed between stations where the grades were favorable to it varied from 17 miles to 35 miles an hour. I think this is a train that at one place made in the neighborhood of 40 miles an hour. I had looked at the movement of

another train, and I am not sure whether this was the one that made 40 miles an hour or not; but anyhow, they run those speeds there. After all that fast time, the average speed of this live stock, from the time it was loaded at the point of origin until its arrival at destination, excluding feed time, which is the only time that can be counted out as I understand it, under the proposed bill, varied from a little over 10 miles an hour to a little above 12 miles an hour. This was all 36-hour stock, with the exception of four cars, which were fed at Roanoke. I think what I have stated in connection with this table, with the memorandum which I have filed, will give a general idea of our conditions and the service we have to perform down there. It is noted in the memorandum that we have had no general complaints, except one which I would like to mention, and that is of getting to the market too soon in one case, which is unusual, and which we never heard of before; but we did have one suit brought against us, which was afterwards withdrawn, for having made too good time and getting to the destination before they were ready for us.

With respect to the regulation embodied stipulating on time, we feel that that must be used in a practical way in getting better service. There are often occasions, through exigencies, and particularly in short-haul movements, where a carrier, even though he is diligent and moves promptly, can not show over 4 or 5 or 6 miles an hour; so that if the present law, which we believe is efficient, will not reach these cases where some roads do impose on the shippers, I think some little quicker access to a tribunal can make people come up and perform reasonable service under the circumstances under which the stock moves, and that can make them perform reasonable service which will answer the purposes. I do not think any road can escape penalties under any stipulated number of miles per hour from the time the stock is loaded to the time it gets to its destination.

MEMORANDUM SUBMITTED BY MR. D. E. SPANGLER.

Coming at once to the question of reasonableness or justness, or practicability of the law or regulation requiring carriers to maintain the average speed of 16 miles per hour, or any stipulated speed per hour, reckoned from the time of loading to the time of delivery to consignee, or to connecting line, deducting only the time actually consumed in feeding en route, I wish to say that any railroad, unless it is so physically deficient from poverty, or otherwise, as to hazard the safety of the trains at such a speed can, without burden, maintain the speed of 12 or of 16 miles per hour between stations; but no road can maintain a freight service that will move all live stock at the average speed of 16, nor of 12, miles per hour from start to finish, however well equipped or diligent or foresighted it may be, or however fast it may run its freight trains, under the circumstances and conditions that surround the handling of live stock.

Representatives of railroads who handle live stock in volume, and which may be looked on as live-stock roads, have explained to the committee that there is no difficulty in running train-load lots at very high speed between stations, but even they, with the average speed pulled down by the slow movements incident to branch-line service, connecting with main-line movement, etc., are unable to maintain,

without failure in some instances, a stipulated rate of speed per hour from the point of origin to destination.

Representatives of other roads who handle only scattering shipments of live stock and only infrequently collect in one train more than a half-dozen cars, and branching off by minor side lines into sparsely settled territory, where train service is necessarily meager, have explained the absolute impracticability of maintaining in all cases even what might be ordinarily considered a very low stipulated average speed, counting out only the feeding time from the calculations.

But I speak for a road from the middle ground; that is, a line that is neither a stock-carrying road in the western sense, nor of the accidental kind.

Except rarely, our road handles no solid trains of live stock originating beyond its boundaries and traveling long distances. Our live-stock business consists principally of cattle and lambs raised in southwest Virginia, and originating at branch and main line stations—a map drawn of the layout would have the appearance of the hand with fingers extended.

Shipments come to these stations in lots of 1, 2, or 4, to 15 and 20 cars at a time. These cars must be joined at side junctions with main-line trains and held at Roanoke for consolidation into full trains for the through run to the northern gateways.

Although enabled to arrange movement layouts for connections with minimum delay and minimum feed stops ordinarily, by working closely with our shippers through the station agents, we sometimes fail owing to happenings to the several pick-up trains, or to the main-line trains, to make the connections with the customary minimum delay, but in the final round-up are able to perform a very satisfactory movement, but not fast.

The miles per hour reaching Roanoke, owing to the conditions and circumstances described, are very low; sometimes falling to 5, 6, or 8 miles per hour for the small lots first gathered up. From Roanoke to Hagerstown the average speed of the consolidated trains is much better, varying from 12 to 18, and sometimes reaching 20 miles per hour, depending upon the number of natural delays sustained meeting other trains and encountering the happenings that go with train movement. Some of these delays would be avoidable on a double track road, but many are unescapable on any railroad.

Counted against the proposed time allowed the carriers is the time consumed gathering in the shipments from branch or side lines and from way stations, oftentimes including station delays to live stock already in trains waiting for other shippers to finish loading theirs, and sometimes waiting on them to arrive at the stock pens; the unavoidable delay at junctions in connecting with main-line trains, detentions at terminal yards waiting for arrival of stock from converging districts for consolidation into stock trains or trains that can be and are run as preference trains, thus landing all the live stock at its ultimate destination with quicker dispatch and better and more comfortable handling than could possibly obtain if run in broken lots in miscellaneous trains, although among the cars in the consolidated fast train, there may be one, two, or several cars that, taken individually, would travel from the beginning to the end at less than the stipulated average speed, however low it may be; yet the through

movement and treatment of the stock would be more rapid and humane than could possibly be accomplished by broken dispatch on miscellaneous trains, merely to avoid delays in connecting at branch-line junction or in yards at consolidating points.

Well-meaning and well-managed roads, though mindful of their duties to the shipping public, and responding thereto, would be persecuted by any regulation requiring stipulated speed.

I believe reasonable service is all that could be expected or should be exacted, and what that service should be depends upon the circumstances and conditions surrounding the movement under consideration. This can be obtained under the existing law, or the offender made to pay heavy damages to the shipper, or pay the penalty for inhuman treatment of the live stock.

Damages have been awarded by the courts for movement of 10 miles average per hour made under conditions favorable to faster speed, and denied for a slower movement under conditions unfavorable to quicker time.

Movements in short-haul service under the stipulation of 5 miles per hour could not escape penalty.

We believe in the 36-hour extension at request of owner, who has the power to say whether his stock shall be confined over twenty-eight hours, and no road can wantonly abuse that limit without encountering serious trouble, and it ought.

As our road is circumstanced, the 36-hour limit enables our shippers to reach specified markets with greater regularity than under the 28-hour law; avoids unnecessary and hurried feeds at Roanoke; it takes the live stock to Hagerstown, the gateway for the East, in unbroken and humane movement; gives ample time for feed and rest there, which fits them for the final run to Philadelphia and New York on fast schedules—just long enough on cars to create the requisite thirst for a good fill before weighing at the sale, which is sought by all the sellers of live stock.

The cattle and sheep raisers in southwest Virginia, where grow the finest beef and mutton known, although not so extensively as on the western ranges, are well satisfied with the service performed by our railroad under the 36-hour law and other existing statutes, although we occasionally err and are brought to account for it, even so far as in one instance being sued for making too quick movement, claiming arrival in time for an off-market sale, which would not have occurred had the shipment moved more slowly. However, being in good repute with neighboring shippers they interceded in our behalf, and which, we suspect, accounts for the withdrawal of the suit.

If the N. and W. has disregarded the 36-hour limit in a single instance, I am not aware of it, and we have yet to learn of the first case of inhuman treatment of 36-hour live stock.

(Thereupon, at 4.15 o'clock p.m., the committee adjourned.)



# HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

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## PART XIX

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WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1910



**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES.**

**JAMES R. MANN, ILLINOIS, *Chairman*.**

**IRVING P. WANGER, PENNSYLVANIA.**

**FREDERICK C. STEVENS, MINNESOTA.**

**JOHN J. ESCH, WISCONSIN.**

**CHARLES E. TOWNSEND, MICHIGAN.**

**JAMES KENNEDY, OHIO.**

**JOSEPH R. KNOWLAND, CALIFORNIA.**

**WILLIAM P. HUBBARD, WEST VIRGINIA.**

**JAMES M. MILLER, KANSAS.**

**WILLIAM H. STAFFORD, WISCONSIN.**

**WILLIAM M. CALDER, NEW YORK.**

**CHARLES G. WASHBURN, MASSACHUSETTS.**

**WILLIAM C. ADAMSON, GEORGIA.**

**WILLIAM RICHARDSON, ALABAMA.**

**CHARLES L. BARTLETT, GEORGIA.**

**GORDON RUSSELL, TEXAS.**

**THETUS W. SIMS, TENNESSEE.**

**ANDREW J. PETERS, MASSACHUSETTS.**

## BILLS AFFECTING INTERSTATE COMMERCE.

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Tuesday, February 15, 1910.*

Mr. FAULKNER. Mr. Chairman, there is an important witness here who has written out his statement. He is from the Atchison, Topeka and Santa Fe road. He has to leave on the train at half past 5 o'clock, and he asks permission to file his statement.

Mr. WANGER. Very well; hand it to the reporter and it will appear in the hearing.

### STATEMENT OF C. W. KOUNS, GENERAL MANAGER WESTERN LINES ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY.

Mr. KOUNS. My name is C. W. Kouns, general manager western lines Atchison, Topeka and Santa Fe Railroad Company. My headquarters are at Amarillo, Tex.

(The paper prepared by Mr. Kouns is as follows:)

FEBRUARY 15, 1910.

Hon. JAMES R. MANN, *Chairman.*

SIR: I desire to file with your committee the following objections to the enactment into law of the bill H. R. 19041, which has for its main object a compulsory rate of speed, fixed at a minimum of 16 miles per hour, to govern the movement of all trains carrying five or more cars of stock.

Such a law, if enacted, would be impossible of enforcement, because upon a very large part of the railway mileage the conditions about the handling of stock traffic are such that it would be physically impossible to maintain the speed between terminals without running at a reckless and dangerous rate over much intervening territory. In my judgment such a fixed speed limit would many times require that rates of 40 or 50 miles an hour, or even higher rates, be reached, in order to preserve the minimum required by the provisions of this bill. It will readily be appreciated that upon roads with varying gradients and the curvatures which are common to most lines movements of that character could not be other than injurious to animals so handled. I apprehend that many claims resulting from injuries are due to excessive speed made under present arrangements for moving stock.

In the western territory, with which I am familiar, stock moves in very large quantities during two periods of each year—approximately from March until June, and September to November. During these periods the service provided is principally special and is arranged for the express purpose of caring for these movements in a way which best serves the purpose of the interests controlling that traffic. That

it is expensive goes without saying, because such trains run one way light, or comparatively light, and the obligation upon our part to accept and move live stock in any quantity from one car to five hundred compels the movement of many trains with but few cars for long distances. If these special trains, or, for that matter, any other trains carrying stock, are inspected and tested at each terminal, as required by existing laws, and the usual and necessary stops for water, fuel, and the waiting and passing of other trains is added, and this time is deducted from the running time with that lost in ascending grades, it will be easily understood that under ordinary and normal conditions the intermediate speed must vary. We have certain districts where the grades and traffic density permit of an average speed of 20 miles per hour, and we make that speed, and on other sections conditions make half that average impossible. Many trains are scheduled to load and pick up small lots of stock upon branch and main lines, and these trains, while usually run at high speed, can not make an average speed of more than 8 or 10 miles per hour.

On one such schedule in operation on our lines the terminal delivery has been uniformly on time, incidentally the number of cars or the loading of the train, has not much exceeded one-half the capacity of the power used, and in many instances not one-quarter of it.

During a visit among patrons using this train I was told by many shippers the service was all they could desire.

The humane idea running through this bill, and which has, indirectly, the support of many good people, would be better served if it were more particularly inquired into. As common carriers we may not pass upon the physical characteristics of the animals offered for shipment. We must accept those tendered whether they are in physical condition to stand the journey proposed, or any journey. The results many times are disastrous to the animals and to the railroads who are their involuntary guardians and responsible for certain values attached to them. It is a well-known fact that stock in immense quantities has been taken from ranges where both food and water were inadequate to their proper support and tendered and turned over to railroads for long movements. In one such instance I recall that bill of lading for one carload was surrendered within the first twenty-eight-hour period, the animals having died en route from sheer weakness due to lack of nourishment. Stock in such condition could never withstand the motion incident to high speed without great discomfort and physical deterioration, which, of course, comes with it, and financial loss.

I do not find in the bill that it is proposed to increase the rate to be charged for the extraordinary speed demanded, although costs of every description would be immeasurably increased.

However, since the speed proposed is impossible from any reasonable point of view, I will not enter upon that phase of the question.

Very respectfully,

C. W. Kouns,  
*General Manager Western Lines,  
Atchison, Topeka and Santa Fe.*

N. B.—I beg to attach a telegram from Mr. J. E. Hurley, General Manager Eastern Lines, showing percentage of arrivals at various market points before opening hours of the markets. K.

TOPEKA, KANS., February 15, 1910.

C. W. KOUNS,

*Care New Willard Hotel, Washington, D. C.:*

Your wire not received until 8.30 this morning. Taking first week in February, all stock arrived Kansas City, St. Joe, and Chicago in time for market day of arrival. At Chicago, 60 per cent in time for early market; at Kansas City, 79 per cent; St. Joe, 54 per cent. This is fair criterion of our general handling.

J. E. HURLEY.

WEDNESDAY, FEBRUARY 16, 1910.

The committee this day met at 10 a. m., Hon. William H. Stafford presiding.

**STATEMENT OF MR. THOMAS F. BARRETT, OF PHILADELPHIA, PA., PRESIDENT OF THE PHILIPSBURG AND SUSQUEHANNA VALLEY RAILROAD.**

MR. BARRETT. Mr. Chairman and gentlemen of the committee, through the courtesy of your chairman I received in the mail printed statements of the record of the hearings had before you prior to this time. So far as I have been able to go through them and make an examination of them, I find that there have been two persons so far here to present objections to that feature of the bill which is under consideration and which seeks to confer upon the Interstate Commerce Commission power to regulate the issuance of stocks and bonds. I find that the ground in other matters has been pretty well covered, but this particular feature of the bill does not seem to have interested the railroad corporations so much as other features. But it is of peculiar interest to us because of the fact, for instance, take the case of my own—

MR. BARTLETT. Are you discussing the corporation bill or the interstate commerce bill?

MR. BARRETT. I have before me House bill 17536, introduced by Mr. Townsend; a bill, No. 16312, introduced by Mr. Mann; and I also have here for the purpose of reference a Senate bill introduced by Mr. Elkins which follows the same lines as the Townsend bill in the House.

MR. BARTLETT. The Townsend bill is what we call the "administration bill."

MR. BARRETT. If that is the view, Mr. Bartlett, then I am discussing the second paragraph of section 9 of the Townsend bill and paragraph 13 of the Mann bill.

I want to say, gentlemen, at the outset, in order that I may be properly understood, that I am in favor of reasonable regulation of corporations engaged in interstate commerce. I think the principle is a correct one. I believe, however, that you are seeking to do something in this bill which you have no constitutional right to do, and a thing which I believe you should not undertake to do for another purpose. I believe it is in accordance with the genius and the spirit of the institutions of this country that the separate States shall be allowed, so far as possible, or entirely, I should say, rather, to regulate their own internal affairs in their own way, without the interference of the Federal Government. For a corporation, however, engaged in interstate commerce, or a railroad corporation whose lines extend across several States, it is very apparent that it becomes

impossible for the state authorities to reach a corporation of that character in such a way as to exercise effective control over its affairs, and that such a corporation, untrammelled by any act or regulation of commerce, may go on and do things that are detrimental to the interests of the people of the country and which should be made unlawful.

This feature of the bill which I am discussing covers a subject which has already been regulated by most of the various States of the Union, and in some instances they have gone so far in the attempt to regulate that subject and have imposed such restrictions that it has practically resulted in the destruction of new railroad enterprises in those particular States. I refer, for example, to the State of New York, with which I happen to be familiar because I have in my control or organization some railroad properties in New York State. On July 1, 1907, the law creating the public-service commission in that State went into effect. Previous to that time there had been what you might call a great debauch in railroad enterprise in New York State. Millions of dollars' worth of stocks and bonds had been issued against what was purely blue sky and not supported by any substantial value. The result was that there was a wild clamor throughout the State and throughout the other States of the Union; in fact, that was an object lesson for the entire country, for the passage of a law that would regulate and prevent just such things as happened in New York State in the Metropolitan Street Railway and allied companies. The people of the State of New York, when Governor Hughes first ran for governor, in 1906, were practically a unit in favor of the passage of that bill. It was passed. It is a rather strenuous bill in its terms. The public-service commission, in the second district, was appointed. The second district comprises all that part of New York State outside of the city of Greater New York, and the policy of the commission in that district has been such, coupled with the operation of that law, that it has practically brought to a standstill railroad construction and the organization of new railroad enterprises in the State of New York.

I have a letter now from the chairman of the public-service commission, a few days old, in which he tells me that there is but one application now pending before the public-service commission for the second district, which, as I said, comprises all of the State of New York outside of the city of Greater New York, for what they call a certificate of public convenience and necessity, which the law requires a railroad corporation must have before it can perform any public acts. This application is for the Buffalo, Rochester and Eastern Railroad, which has once been denied by the public-service commission.

Mr. BARTLETT. I don't want to break the thread of your argument, but I would like to understand what you mean by that. I am not familiar with the New York statutes. You say that there has been but one application to do what?

Mr. BARRETT. I will explain that. There is but one application now pending before the commission of the second district, which comprises all of the State of New York outside of the city of Greater New York, for a certificate of public convenience and necessity. The law which I have referred to, in New York State, as having taken effect July 1, 1907, provides that a railroad corporation in that

State, whether it is to be operated by steam or electric power, must secure from the public-service commission what they call a "certificate of public convenience and necessity" before it can do any other corporate act. That certificate of public convenience and necessity is a prerequisite before the corporation can do anything except to file its application for a charter. The public-service commission, following the spirit of the times, adopted a very conservative policy in the matter of issuing stocks and bonds. They proposed as a matter of policy of the commission what you propose to enact into law in the second paragraph of section 9 of the Mann bill, that no railroad corporation might under their direction issue any stocks and bonds excepting upon the simultaneous payment in by such corporation of the par value in cash, or property of the cash value of the par value, of the certificates or bonds to be issued.

Mr. ADAMSON. Without recognizing for a moment the power of Congress to have anything to say what a local corporation shall do, isn't it right that when you organize a corporation and issue stock, that you shall receive as much money as the stock shows in the treasury?

Mr. BARRETT. It is right that you shall have enough money in the treasury of the corporation to carry on the purposes for which it was organized.

Mr. ADAMSON. But isn't it right that when you organize as an artificial person to do business with the world, holding out that it is a \$100,000 corporation, that there shall have been that much assets put into the corporation to be represented by stock?

Mr. BARRETT. I can not subscribe to that as a sound principle in business affairs generally, but if it is applied to a railroad corporation by law there is no reason why it should not be applied to all sorts of corporations.

Mr. ADAMSON. The corporation may take a good note from a man, and that is an asset if it is a good note. Now, beyond that, while I utterly deny that it is any business of Congress to fool with that, I think you have a right, having formed an organization and issued that much paid-up stock, to get all the credit you can from selling bonds to any amount, and it is no business of Congress or anybody else how much credit you secure.

Mr. BARRETT. I agree with you as to that last statement.

Mr. STAFFORD. Is there not this distinction between a public-service corporation and other corporations in which you claim that there should be no distinction that a public-service corporation is regarded as a quasi public corporation whose affairs should be supervised by the Government under which they are doing business?

Mr. BARRETT. That is a fact.

Mr. ADAMSON. But there is not a word in the Constitution—the Constitution authorizes Congress to regulate commerce, and under that provision of the Constitution we can look into the practices and rates charged by people engaged in interstate commerce. But if you are going to talk about how much a fellow shall be worth, and how he shall raise his money, and what credit he shall have, then you might as well undertake to say what kind of a coat he shall wear, and there would be just as much sense in it.

Mr. BARRETT. That is correct, and I subscribe to that.

Mr. STAFFORD. But the witness thinks that there is no reason for the Government exercising any supervision over railroads or any other corporation.

Mr. ADAMSON. There is a fair distinction between what the Government may learn about a corporation, what it is doing, its practices, and so on—that is, the Government may get information of what that corporation is doing in order to fix how much rate it should charge.

Mr. BARRETT. In order that I may have my views expressed here, I want to say that this distinction may be made between a railroad corporation and other corporations generally: A railroad corporation enjoys certain public franchises; that is, an electric railroad would have to build its lines upon the highway or through the streets of a municipality, and that would make it somewhat of a distinctive quasi public corporation because it enjoys distinctive privileges granted to it by the municipalities through which it runs. That situation hardly applies to the steam railroad, because it is constructed entirely upon a private right of way, it owns its own property—that is, it operates altogether, practically, upon its own property, and enjoys no franchise privileges from the State or municipality excepting the charter which it obtains from the State.

Mr. STAFFORD. Railroad corporations are granted privileges which are not granted to the ordinary corporation, are they not?

Mr. BARRETT. It is quite true that railroad corporations have certain obligations imposed upon them as common carriers, but I do not see where a railroad corporation receives any privileges of a business character which result to its advantage over any other class of corporations.

Mr. BARTLETT. It occurs to me—I don't want to interrupt the thread of your argument or suggest what line you shall pursue—but it occurs to me that the constitutional question which I apprehend is going to be raised ought not to be mixed up with any proposition that Congress has not a right, or the State, or authority—the sovereign—the right to regulate a railroad corporation, or what you call a public-service corporation, which has been granted a charter not simply to carry on business, but to exercise a part of the functions of a sovereign in that it can condemn the property for its right of way and charge tolls. That question has all been thrashed out both in England and in this country, and I thought that even the railroad men had come to the conclusion, which you opened your argument with, that they conceded the right of Congress to regulate interstate commerce and thereby regulate the practices and rights of railroads; but you are going to contend that it did not have the right to regulate the issuance of stock, and I thought, of course, that the issuance of stock becomes a matter of commerce or regulation of commerce.

Mr. BARRETT. That is exactly what I have in my memorandum.

Mr. BARTLETT. I beg your pardon for interrupting you.

Mr. BARRETT. But I was answering the various suggestions made by members of the committee.

Mr. ADAMSON. A State may grant a charter to do a great many things that Congress can not interfere with under the provision to regulate interstate commerce.

Mr. BARRETT. I don't believe that the Federal Government has any right or power to regulate the issuance of stocks and bonds of railroad corporations. I think that they have a right to regulate every act which is in its character interstate. A railroad corporation draws its corporate powers from its charter, issued under the laws of the State, including what Mr. Bartlett refers to as the right

of eminent domain and the taking of private property where needed. Now, if that is true, it does not seem to me that it was one of the powers conferred upon the Federal Government in the Constitution that it should extend its arm inside the boundaries of a State and take away from that State the right to regulate its affairs as it sees fit.

Mr. BARTLETT. Which is regulation by police powers.

Mr. BARRETT. That is right. There are certain police powers exercised by the Federal Government all over the country, which is a principle to which we must submit, but there is a wide distinction between the exercise of ordinary police powers and the taking out of the hands of the people in the several States the right of incorporating their railroads and limiting the amount of stocks and bonds that they may issue.

Mr. ADAMSON. The Federal Government can have nothing on earth to do with that police power, and it can only regulate the practices and rates of interstate transportation.

Mr. BARRETT. I mean the broader interpretation of the police powers, to carry on the functions of the Government in the execution of any administrative powers or functions which the Government sees fit and which is in a general sense covered by that expression. Of course there is a wide distinction between police powers and an execution issued, and things of that sort.

As I find myself more in accordance with the views of the committee than I expected to when I came here, I will go on with my argument.

Mr. BARTLETT. Do not take that for granted, because there happens to be here a minority of the committee who seem to agree with you.

Mr. BARRETT. I mean the members of the committee present, and upon these constitutional questions only. My principal object in appearing before you gentlemen is to call your attention, leaving out the constitutional question, to what I believe would be an injustice, if this feature of these various bills should become a law, upon railroads located wholly within the limits and boundaries of the State. I subscribe wholly to the view that the Federal Government has no power to exercise supervision over railroad lines that are wholly located within the boundaries of the State, excepting so far as such railroads may in their interchange of traffic with other carriers do certain acts of interstate commerce. Say if a railroad in Pennsylvania takes a carload of lumber to New York City, lumber which originates on its line, carries it to the connecting carrier, and they take it on to New York City; I think that, gentlemen, is a joint act which is interstate.

Mr. STAFFORD. Are the provisions of the New York statutes limiting the authority to issue stocks and bonds the same as the provisions of this bill?

Mr. BARRETT. No, sir; the New York statute, which is referred to commonly as the public utilities act of New York, does not place any limit upon the issue of stocks and bonds which may be made by a corporation. It simply confers upon the commission discretionary powers, and the mortgage securing the bonds must be approved and the amount of stock which may be issued by the company must be approved by the commission before they are legally issued.

Mr. BARTLETT. That is the same as we have in Georgia.



Mr. BARRETT. It is a discretionary power of the commission.

Mr. STAFFORD. Are you acquainted with the provision in the Massachusetts statute?

Mr. BARRETT. I am, in a general way. We have never had any experience in that State in railroad construction and organization, and therefore I have only a general knowledge of it.

Mr. STAFFORD. It has been represented that their provision has worked satisfactorily as to the building and protecting of public utilities.

Mr. BARRETT. That is not my understanding. The law has been very detrimental, as I understand it, in Massachusetts, to the building of new railroads. Of course Massachusetts is a small State, and it is pretty well developed as it is, but without having anything at hand to support my views upon this subject outside of information which I have gotten together from common hearsay, I would say that my understanding is that the State of Massachusetts has recently, as an inducement to the construction and building of new railroads or public-service corporations, through its commission, made a ruling allowing such corporation to issue an amount of stock in addition to or in excess of cost of construction of the road, which would be purely water, to the amount of 50 per cent, I believe, of the cost of the property. I am not familiar with the law of Massachusetts, but I think perhaps that the power there may be discretionary as to what the commission may do.

Mr. PETERS. Have you a more specific reference to that ruling?

Mr. BARRETT. I have not. I was going on to say that it was simply a matter of hearsay, and I am not prepared with documentary evidence to offer. The public-service corporations of Massachusetts, I know from general knowledge, have not developed, have not progressed, nor been as successful as they have been in some other States. A few years ago there was more reorganization of street railroads in the State of Massachusetts, I understand, than most any other section of the country. The commission had limited public-service corporations in the matter of issuing of stocks and bonds so closely that they were unable to get out sufficient amounts of capital to give their companies a good, lusty, healthy growth. That is a matter of general knowledge which comes to me from being engaged in the business, rather than being supported by proof.

Mr. PETERS. Excuse me, but why wouldn't that tend to prevent the reorganization if the amount is limited?

Mr. BARRETT. That is the unfortunate view taken by persons who are not thoroughly acquainted with the practical workings of railroad organization. One of the worst things that can happen to a railroad corporation is not to be able to grow; not to have such elasticity to its growth as to be able to use its securities and its machinery when demand requires it.

Mr. ADAMSON. For your own safety, I feel it my duty to inform you that the Member who has been addressing you comes from Massachusetts, and you may be on dangerous ground.

Mr. BARRETT. I appreciate the interest that he takes in the subject. When I referred to the State of Massachusetts, I surmised that he was particularly interested in that Commonwealth. However, this is a fact; the public-service commissions, such as exist in New York State, Massachusetts, Texas, and elsewhere, are usually

composed of men who are not practical railroad men, and unfortunately in harmony with a great percentage of the population of the country. They assume their position very often with the same amount of prejudice that a good many other individuals entertain against railroad corporations and the methods of railroad men. Understand we have been very much abused in the public press in the last few years, caused by doing some very bad things, so that it often occurs that inexperienced men who serve upon commissions of that character do not understand, they have no intimate knowledge of the principles involved in the work carried on, and are liable to arbitrarily exercise a power which they consider for the public good and the good of the corporation, but which often develops things that are very destructive.

Now, it has not been a good thing for the State of New York nor the people of New York that they secured the passage of the bill which they call the public utilities act, because railroad construction in the State of New York, railroad extension and railroad development generally, outside of improvements made by the existing railroad lines in increasing equipment and so forth, has practically been stopped. It is not to the interest of the people of a State to stop their internal development, the strangling of that which would increase their prosperity. There are in the State of New York, outside of New York City, millions of dollars invested every year in railroad securities, but that is being sent into Canada and to the other States of the Union for investment where things are more liberal; from New York State to Central and South America and to Mexico. It is fair to assume that the increase of public service utilities in that State would induce considerable of that capital to remain at home and be invested in a way which would result in the formation of such corporations as would be of great value to the State, but that has been greatly retarded by the effect of the law governing the policy of the commission.

Not long ago, if we take what the newspapers say, and if the newspapers accurately express what took place, a committee of citizens from a locality in northern New York visited Mr. President Thomas, of the Lehigh Valley Railroad, with the request that he induce a company to construct an extension of their road through their locality, and the answer which they received was—I have a memorandum of it here—to the effect that investors will not put their money into any venture where they are not to make over 5 or 6 per cent, and where they are more likely to get a much smaller return, or none at all. The reason given was that it was easy for them to find a more inviting field for their capital, and I think that expresses a literal truth.

Take, for instance, the operation of this law, leaving out the constitutional questions, and let us ask if the Federal Government has a right to go inside of the boundaries of a State and undertake to assist in regulating the internal affairs of that State, and if it has a right to limit the amount of stocks and bonds which even a railroad whose lines are located wholly in that State may issue and are not controlled by the interstate-commerce law.

Now, let us take the State of Tennessee, for example. It is desired by the citizens of a certain locality in one portion of the State, in order that they may improve that section of the State where there may be considerable coal, oil, or lumber, or a section that may adapt itself readily

to agricultural development if opened up, to get together and organize themselves into a company, make their survey, adopt a location, and have all the features of their construction of the railroad properly figured out, and they go out to the outside world with their prospectus for the purpose of attracting capital to enter into the enterprise. They say to the man whom they are trying to interest: "This is a good enterprise; it opens up a large section of our State teeming with natural wealth which should be developed, and we want you to come along and put your money in and help develop that part of our State."

"Well," he says, "but I can only get 5 or 6 per cent upon my investment if I put my money in there." He says: "If I join with you in this work of developing that part of your State, then I take considerable risk—a great speculative risk—and I am not willing to do that; I am not willing to invest my capital, let it go down into your State and be handled by your local people, for merely 6 per cent upon my investment," or whatever the rate of income may be. "I can loan my money upon a mortgage, or I can invest in a fixed annuity or some other form of investment where I know it is safe."

Now, let us follow that example a little further and take another view of that case. Suppose this railroad has financed itself and has been constructed and you have opened up that section of the State. The construction of the railroad has attracted settlers, the opening up of the coal mines and the manufacture of lumber and the development of agricultural lands have practically developed that section, and that is followed by a general enhancement of the values of real estate and of everything. Is it right that the men who put their money into the corporation, who took the risk involved in the building of that railroad, should not be permitted to participate in the enhancement of values which has followed and the development which has been caused by their grit and courage in coming in there and making that investment and in opening up that section of the country? Take, for instance, a town site laid out by speculators, and a bank has been established there. In the beginning the bank was a small affair, and the stock probably was not worth par value; but in the course of a few years the stock has doubled in value because of the increase in returns; then I say that likewise the same principle may be applied to a dry goods store that might be located there, or anything of that kind. I contend that it is fair to say that a man who has the grit and enterprise to take the initiative and to risk his capital and make those investments profitable should be permitted to participate in the enhancement which follows.

MR. KENNEDY. The argument is to keep him from taking it all, by simply adding to his stock, which practically represented the growth in all the country—by adding that much to his stock every now and then.

MR. BARRETT. I was discussing the case of one small railroad. In order to go into the matter along the lines which you suggest, I will say that perhaps that railroad in the course of time, if it succeeds, will extend itself 50 miles farther, and after a while it will extend itself another 50 miles, and after a while it will become a trunk line, when, of course, it becomes reasonably the subject of interstate regulation; but I do not think that Congress has the power to regulate the issuance of stocks and bonds. I think that is a power inherent in the sovereignty which granted the charter and under which its life was

given. I think, however, it has the power to regulate rates and all other acts of interstate commerce.

Mr. KENNEDY. There is another theory that is set forth in some of the decisions, that a railroad is a mere public highway, and that one of the ways a public builds a highway is to grant a contract upon the part of the public with a corporation; and after it shall have built a public highway between designated points—a specified public highway—shall have the right to take a reasonable toll over that highway to compensate it for doing the public work. That is one idea of the railroad that has been supported by very respectable authority, the supreme court of the State of Pennsylvania, in the case in which Jeremiah S. Black announced the decision back in 1856. Now, if that be the correct idea of the railroad, it is manifestly very important that there should not be water put into the stock of the railroads, if the public's contract with the corporation in building that road be, as he defined it in that case, an agreement that the corporation should hold control of the highway forever, taking a reasonable compensatory toll forever to compensate them for building the road.

Mr. MILLER. But another court has taken a contrary view, however.

Mr. KENNEDY. There has no court held to the contrary, that I know of.

Mr. BARRETT. Yet I don't believe that that covers exactly the question of the lawful right of the General Government to exercise this supervision over stocks and bonds.

Mr. KENNEDY. Here is another feature: If the National Legislature had never asserted their right to regulate a railroad wholly within a State, so that that question has never yet been before the courts, as I understand it, we have limited what we have attempted to do by not attempting to regulate railroads wholly in a State.

Mr. ADAMSON. I am not aware that the courts have ever held that the regulation of commerce carried with it the authority of the Federal Government to go into all of the States and prescribe how and what stocks and bonds a local corporation shall issue.

Mr. BARRETT. That is a view that I heartily subscribe to.

Mr. ADAMSON. They may get information about watered stock, and they may fix rates accordingly, but it is not necessary for them to undertake to run those corporations in order that they may know just how much the rates ought to be.

Mr. BARRETT. I have a reason for referring to the subject of the railroad located wholly within the boundaries of a State. I find in part 11 of the hearings a question that was propounded by Mr. Richardson to Mr. Byrne, of New York, as to what effect the passage of this act would probably have upon railroads located wholly within the boundaries of a State.

Mr. RICHARDSON. And carry out the provisions of the charter granted to them by the State, both as to reorganization and consolidation—how do you answer that question?

Mr. BARRETT. I answer that I don't believe that the Federal Government has any right, under the spirit of our institutions, or any constitutional right, to invade the territory of a State and to interfere in any way with the regulation of its internal affairs.

Mr. RICHARDSON. But does it not go further than that? If a charter, as you know very well, no doubt, can not be granted by the Federal Government for any purpose, can States grant those charters?

Mr. KENNEDY. That is a question.

Mr. RICHARDSON. If the railroads comply with the charters granted, and the charters give them authority to effect a reorganization or to consolidate, and that reorganization or consolidation does not take place until the Federal Government has issued a charter to that railroad, wouldn't it be a fraud upon the stockholders and the bondholders because it would null their property and defeat their purpose?

Mr. BARRETT. I think it undoubtedly would be as you suggest, but you suggest rather a charter being granted by the National Government to a railroad.

Mr. RICHARDSON. You know that the President of the United States is setting forth that as his desire, but we do not say that it is going to be done.

Mr. BARRETT. I did not understand that the President had made any recommendation with respect to the National Government issuing charters to railroad companies.

Mr. RICHARDSON. Well, the Attorney-General of the United States—it is a public matter, and the bill has been introduced.

Mr. BARRETT. I don't think it is good policy, and I do not believe it is good law. There has been a great discussion upon that subject in the earlier history of the country.

Mr. RICHARDSON. And that goes very strongly toward the consolidation of this Government.

Mr. BARRETT. Yes, it has a centralizing tendency which ought to be checked now rather than allowed to go further on, and I do not mean that as a criticism of the policy of the administration, and it does not refer to the President's message or to any of his recommendations. It is simply an individual opinion of mine that we all like to hold and once in a while express. But the question of the right of the General Government to issue charters to any sort of corporation, even a national bank, as you will remember, was one of the questions that was very warmly contested in the early history of the country.

Mr. BARTLETT. And some of us have the idea that they haven't the right yet.

Mr. BARRETT. It was not intended by the framers of the Constitution to confer that right. I think anyone who reads impartially will agree.

Mr. KENNEDY. It would not be a stretch of our ideas of right to suppose that under the power to regulate commerce the National Government would have the power to regulate the building of a highway to facilitate commerce in a State. Is the building of a highway an interference with the internal affairs of a State within our National Constitution exclusively?

Mr. BARRETT. I think that in answering that question, that the difference must be more clearly defined between a railroad and an ordinary highway. I suppose that that suggestion has some reference to the clause of the Constitution which gives the Government authority over highways and post-roads, but there is a great difference between a highway as it was known in those days when the Constitution was framed and before we had railroads, and the railroad corporation of to-day. While it is quasi public in its character, it is really private property in its ownership.

Mr. KENNEDY. In my judgment there is nothing private about it. All the directors of a railroad and all the stockholders behind them have no right to use it as private property.

Mr. BARRETT. I mean private property in the sense that it is privately owned.

Mr. KENNEDY. It is held as a mere naked trust for the public.

Mr. ADAMSON. That is true; but the jurisdiction of the trust is another question. It is in trust for the public, but under the formation of this Government a local government can look after those things. While I am not squeamish, and I am not going to call out an army to defend the doctrine of state rights, yet I do not believe that we should overburden the General Government by giving our attention to those things that we have no right or duty to attend to.

Mr. RICHARDSON. The railroads are quasi public property, and it has never been defined otherwise.

Mr. BARRETT. I think the directors or the trustees of a railroad corporation are, as the gentleman suggested, invested with a trust which represents the stockholders and the bondholders of the corporation, and that the stockholders and the bondholders of that corporation are the owners of that private corporation which exercises quasi public functions as a carrier of freight, passengers, and so forth, and it is properly and only a trust subject to special statutes which define its duties as a common carrier.

Now, I do not want to take up an unreasonable amount of your time, but what properly brings me before you is this: The property under my control, at least that which I have general control over, would be injuriously affected by this statute in this way: The bill does not expressly except, as it should, from its operation railroad lines located wholly within the boundaries of a State, and on that account it leaves, as has already been developed here in this discussion and in the various hearings before you, a question as to how far the Interstate Commerce Commission might go under this bill in seeking to regulate the affairs of those corporations located wholly within the boundaries of a State.

Mr. RICHARDSON. I do not agree with you. I do not think there is any apprehension about this law being confined to any common carrier commencing in a State and ending in a State, and having no interstate commerce. Surely this committee or Congress would not undertake to do such a thing as that, and I do not think there should be any apprehension about that.

Mr. BARRETT. I should be glad if the committee would take that view of it.

Mr. RICHARDSON. I don't think there is any question about the committee taking that view of it.

Mr. BARRETT. That distinction is clear in the minds of all who have discussed this bill, and the thing which I would like to see cleared up is that there is a distinction. I notice in the Elkins bill that that bill does expressly except from its operations electric street railroads, electric lines, and I see no reason why it should not be so expressed here.

Mr. RICHARDSON. I believe this committee does not except the electric lines from this bill, the taking of them out.

Mr. BARRETT. It seems to me that it should except small railroads, for otherwise there may be a cloud. We have at this time the refinancing of a number of railroad corporations that come into—

Mr. KENNEDY. Do you think that by excluding electric lines we would go against the rule in regard to classes?

Mr. BARRETT. I think, if I understand the object of this bill, it is to reach interstate carriers only.

Mr. KENNEDY. Suppose the carrier now operates with one class of power, and that is electricity in place of steam, would that be a proper classification?

Mr. BARRETT. That would not create a classification.

Mr. KENNEDY. Then we could not except them.

Mr. BARRETT. Not if they are in interstate, because the question of steam, electricity, or the mule does not fix their character; they are railroads engaged in interstate commerce nevertheless.

Mr. KENNEDY. We could not, under the guise of simply designating which should be affected, exclude on any such classification as that.

Mr. BARRETT. No, sir; because many of the larger railroad corporations now have under consideration the electrification of their lines, and a part of them at least extend over the boundaries of the State—they take off the steam power and they take on the electric power. So that does not change the business which they transact. But I think that this bill, in order to clean up that situation, in order that we may go on without a cloud hanging over us, should expressly except from its operations electric lines, and steam railroads located wholly within the boundaries of a state.

Mr. MILLER. And not engaged in interstate commerce?

Mr. BARRETT. Not engaged in interstate commerce excepting in their joint character as common carriers. As I stated awhile ago, if my railroad in Pennsylvania takes a carload of lumber, and another carrier takes it at a connecting point and carries it on to New York City, that is an act of interstate commerce, but it is only incidental to the exercise of its general business.

Mr. MILLER. But where can you draw the line of exception?

Mr. BARRETT. By applying this bill directly to the transactions which are interstate in their character; for instance, if a carload of lumber is shipped from a point on my railroad to the city of Philadelphia, that is intrastate transportation, and does not in any way involve the question of interstate transportation. On the other hand, if we contract to carry freight or passengers outside of the limits of our State upon a joint contract made with the other carriers with which we connect, then to that extent it is interstate commerce, and there is a distinction which I think is perfectly plain.

Mr. KENNEDY. We had before our committee, I think on yesterday, some gentlemen who wanted the law to provide that railroads wholly within a State should have the right to have joint rates made with steam railroads, so that they could compel, through the Interstate Commerce Commission, the formation of collections with other lines of railroad.

Mr. BARRETT. If that was so, that would become a subject of interstate commerce, and the commission would probably have jurisdiction over it, but a small railroad located wholly within the boundaries of a State has a sort of double character in that capacity.

Mr. KENNEDY. Could it enter into a joint rate without becoming an interstate carrier, if the roads with which it contracts or arranges a joint rate crosses the state lines?

Mr. BARRETT. It could do so without becoming an instrument of interstate commerce, excepting in so far as that particular contract is concerned. There are other contracts of a similar character.

Mr. KENNEDY. Its character, in your judgment, would change every time it had something on it to go out of the State?

Mr. BARRETT. I think that if a crime is committed on the high seas within 3 miles of land that it might properly be a crime punishable by the federal authorities, whereas if it occurred wholly within the boundaries of a State it would be entirely different, and the difference is in the time of the transaction.

Mr. KENNEDY. But we are driving along in the dark if the character of this road is not determined by every transaction or every shipment over it. This, it is true, has not been before the courts in exactly the shape we are now discussing, but don't you think that the courts will hold that its character is determined by what it is available for, rather than what it is actually doing at any particular time?

Mr. BARRETT. Taking that view of it, then, it is available for two purposes, for intrastate commerce or interstate commerce, as the contract which it makes requires; it has a dual capacity. In its contract with the other carriers, where they make a joint rate to points out of the State, it would be doing an act of interstate commerce. In all its other relations and respects it is properly under the supervision of the Interstate Commerce Commission so far as its interstate contracts are concerned, and properly outside of the jurisdiction of that commission so far as its intrastate business is concerned.

Mr. KENNEDY. Oh, but as to its financing, if it comes within the category of interstate carriers, why should it be excepted from any rule that we should make here?

Mr. BARRETT. Because of its being incorporated under the laws of a separate State. I contend that the right to issue stock and bonds is an inherent power under its charter granted by the State, and which power can be given or taken away only by the authority under which it was created; and therefore that the Federal Government has no legal power under which it could take hold of that company as a purely local corporation inside of the boundaries of a State and interfere with that State in its regulation of its own internal affairs by saying how much that railroad may issue in the way of bonds and stocks, when it is incorporated and derives its life and powers under the laws of that State. If it seeks to do a general interstate-commerce business, and has its lines beyond the boundaries of the State, then it takes on the character of an interstate-commerce enterprise, and is properly subject to the jurisdiction of Congress and the Interstate Commerce Commission and other federal authorities.

Mr. BARTLETT. Of course you are familiar with the decisions of the court in what we call the "employer's liability act." As I recall, it is there decided that it is not within the power of Congress in the exercise of its power and authority under the commerce clause of the Constitution to regulate the recovery of an employee, the manner in which that recovery should be applied, and to whom it should go, that being a matter not of commerce but state law. Isn't that rather similar to the provision that you are discussing here?

Mr. BARRETT. There is some similarity.

Mr. BARTLETT. Here, while Congress has the power to regulate interstate commerce, and in the exercise of that power can prescribe



that they shall not charge more than reasonable rates and shall not engage in practices which are detrimental to the public in carrying on interstate business, yet when you come to the internal affairs of a corporation and when you come to prescribe who shall recover and the manner of recovery and the payment, and the persons to whom the recovery shall be paid, is there not a great deal of similarity between the two cases?

Mr. BARRETT. There is considerable similarity; yes.

Gentlemen of the committee, my object in coming before you was to discuss more particularly the business features and the results of the practical operation of this law, rather than its legal and constitutional features. Two years ago I used to try to make a good living in the practice of law, but there has been so much of the administrative part of this work given to me in the past two years that my time is all taken up with practical questions, and I don't have much time to devote to legal study, although I have kept pretty closely in touch. It has been somewhat of an interesting study to follow them up, yet at the same time the object for which I came here, which I had in mind, was to try to make it plain to you, as a man who has something to do with the practical affairs of organization and building of railroads, who now has under his control some enterprises of that character, that the operation of this bill would be a great hardship to the people in various States who want new railroads constructed and want their States developed. I think, in order to get the matter down to a concrete proposition, conceding that the Federal Government has the power to regulate the issuance of stocks and bonds of interstate railroads, which they do not do, but conceding that for the sake of argument, if that is a fact, then the power lodged in the commission should be of a discretionary character, and this bill should not be mandatory upon that subject.

Mr. KENNEDY. There is a discretion given to them in the selling of the bonds. They have a discretion as to what price the bonds should sell for.

Mr. BARRETT. If you will pardon me for expressing a view upon this matter, I will say that I think the prices of stocks and bonds, like all other commodities the world over, are regulated upon their intrinsic value and upon the law of supply and demand.

Mr. KENNEDY. But in doing this act they are doing more than that; they are saying whether there should be a railroad built at all, and I think that is just as important as anything else. I think somewhere there should be a right to regulate a railroad; somewhere there should be some one to say, "This is not required; you shall not go ahead and issue a lot of stock and swell the tolls for after generations in building a railroad where it is not needed."

Mr. BARRETT. I agree to some extent with the views of the gentleman, but not altogether. I stated sometime ago my personal belief that all corporations engaged in interstate commerce ought to be subject to a reasonable governmental regulation. I think the regulation proposed by this bill, from what the gentleman suggests, would be extremely unreasonable. I do not believe that the people of this country have any great desire to place in the hands of a commission at Washington the power to do such things as the gentleman suggests. I do not believe that the people of Texas, California, or Oregon, with vast sections of country undeveloped, desire to have themselves

placed in a position where they must come down to Washington, or send representatives, to seek the authority of a government commission before they can go on and use their own capital to develop their own section of the country.

Mr. KENNEDY. I think you are right about that, that the public sort of look upon the situation with regret that they feel that they have to do it on account of the things that have been done.

Mr. BARRETT. Ah, that is just the point that we want to get at, and the point that we want to get before the committee. There is no distinction, as I said in the beginning of my argument, and before the gentleman came in, made in this bill between the class of railroad corporations already in operation, already constructed, already earning sufficient money to pay interest on its bonds and to pay its dividends, and those new corporations that are yet to be constructed, and financed, and built to develop those sections of the country where development is much needed. The trunk lines of the country whose stocks are selling at par or way above par are not in any way oppressed by this feature of this bill. If they are only required to pay 50 cents a dollar on the stock, it is a perfectly easy matter for them to issue all the stock they want. But you can not sell stock of a new railroad for par, or anything like it.

I will prepare a written statement to file with the committee in concrete form; but in following up that thought, if a new railroad is to be constructed, and it is provided in the operation of this law to pay in 100 cents on the dollar, the par value of the stock, then you will never be able to sell that stock, and in that way you have destroyed the initiative and gone a long way toward the destruction of that enterprise, and you have placed in the hands of the railroads already existing an absolute monopoly of the railroad business. They can finance every necessity, because they are strong, lusty, and able to do it, but they are not prepared to build these extensions, for there is not a trunk line in the Union to-day that is not compelled to spend millions and millions of dollars in increasing their facilities, extending their lines, and keeping up with the growing demands of business upon their lines. Therefore the latent resources of the country, the outlying districts, will wait for many years for the development of their sections. On the other hand, if you do not take away all inducement and utterly destroy these new enterprises, you tie their hands, as they have in New York State, and you stop railroad development and you check the progress of the country. Capital will even go to Canada, and it is going there now, and millions of dollars are being put in other sections of the world where the laws respecting investments of this character are more liberal.

Mr. PETERS. Do you think that the enactment of the antistock-watering laws offers any protection to investors?

Mr. BARRETT. I do not think so. I think it will result in harm to the country and the tying of the hands of the people who would go ahead and invest their money and would cause others to invest their money. I think it is a hardship, and for the reason that I stated a while ago when I instanced an imaginary railroad in Tennessee. If a railroad is to be built to cost \$25,000 a mile, and it will cost that, and if that company shall issue \$15,000 of stock also, which would be \$40,000 per mile altogether, and \$15,000 of that is pure water given as an inducement to risk capital in the enterprise, which the

capital takes that goes into that enterprise in the beginning and makes possible the success of the road, I think it is just and reasonable. I think, of course, that there should be some regulation. I do not think a corporation, new or old, should be permitted to go on and issue stock without regulation; but I think discretionary power should be contained in this bill instead of a mandatory power, and that the Interstate Commerce Commission in the exercise of its power under this bill should give a reasonable leeway to new enterprises in order that there may be an inducement for the attraction of capital in the way of profit in the construction of the railroad itself.

Mr. PETERS. You referred to the Massachusetts situation. The Massachusetts antistock-watering laws were passed in 1894, and you are probably aware that Massachusetts has as great street-railway mileage as any State in the Union, next to New York. They were largely constructed under those antistock-watering laws after 1894. Have you any explanation of that?

Mr. BARRETT. I have no explanation of it, because I have had no particular experience with railroad matters in Massachusetts; but it is a fact that I have been advised by hearsay that street railroads in the State of Massachusetts, a large number of them, went through the reorganization because they were so closely limited in the matter of issuing stocks and bonds that they didn't have sufficient leeway to finance their requirements, and therefore they were unable to do that which they might have done under other conditions to protect themselves. Whether that is an actual fact or not the gentleman knows better than I do. But they were reported as a very large number of the street-railway organizations in the State of Massachusetts, and I am personally aware of a good many of them myself.

Mr. PETERS. Can you name one or two?

Mr. BARRETT. I could not name any corporation. I remember, however, that one of the firms of my own city, Philadelphia, was largely engaged in the construction of electric lines about Boston, and that all of their roads got into the hands of receivers; and I have a distinct recollection in my mind of hearing that subject very fully discussed. But, as I said some time ago, I have nothing to support that excepting mere hearsay.

Mr. PETERS. I should differ with you so far as that is concerned. There have been very few reorganizations under the Massachusetts law; the suburban street roads have paid better and are paying better.

Mr. BARRETT. As I said, it is merely a matter of hearsay, and I am not in a position to support it with documentary evidence or otherwise.

I am sorry to have to state to you, gentlemen, that it is my opinion, based upon the experience I have had in matters of this character, that the result of the passage of a bill containing the clause set forth in the second paragraph of section 9, H. R. 17536, would be to stop the construction of new railroads and do a great injustice to the holders of securities of roads that are being reorganized.

I do not want to be misunderstood, however. Personally, I am in favor of reasonable federal control of corporations engaged in interstate commerce. The difficulty I find in this legislation is that it makes no distinction between roads that are now in operation and on a substantial earning basis, and the stocks of which in most cases are selling equal to or for more than par, and those that are yet to

be organized and built or reorganized and financed. If this section of the bill becomes law the best rate of income that can be obtained by persons engaged in the business of organizing and building railroads would be possibly 5 or 6 per cent on their investment, providing such investment yields any income at all for several years, which in the case of new railroads has seldom been true.

But this is only one of the serious obstacles which this bill, if it becomes a law, would place in the way of new railroad building.

To illustrate what would be necessary in order to meet the requirements of this bill, let us take up a hypothetical case. Say a railroad is to be incorporated in the State of Tennessee, which is a State that has a large amount of mineral, lumber, and agricultural lands yet to be developed and which development can only be carried on by the building of new railroads. The length of the projected line, we will say, is 50 miles. It is to be built for the purpose of opening up timber and coal lands and a section of country that will likewise adapt itself readily to agricultural pursuits. The individuals interested, desiring to put their coal and lumber on the market and to open up the tributary country to development, conceive the idea of building a railroad. The first step they take is to execute such papers as are necessary to obtain from the State a charter for the company; they proceed to have surveys made and to adopt a location for the railroad line through the section of the country where it is desired to build it. The next step is to find a contractor to do the work of building and a proper medium through which to sell the stocks or bonds of the company, or at least such portion as are not subscribed for by individuals who take the lead in the enterprise.

At this point I want to call your attention to the fact that the initial steps in new railroad construction, in 99 cases out of 100, are taken by persons in the locality where the railroad is to be constructed, and they are prompted to go ahead with the enterprise because they feel the need of railroad facilities. To meet the requirements of this bill, the individuals proposing to organize such company would be compelled to employ a lawyer to prepare and file with the Interstate Commerce Commission a petition setting forth and describing what was proposed to be done, and asking consent of the commission to the issuance of stocks and bonds, etc. It would be necessary to send this lawyer, at great expense, to Washington, where he would have to remain, no telling how long, until he could get a hearing and present the matter to the commission. It would likewise be necessary for them to send their engineers, with maps and other proofs, carefully made up, as to the cost of construction, etc. After the commission had acted on the matter, if the decision was adverse, an appeal could be taken to the court of commerce; and after the court of commerce had rendered its decision, if it was still adverse, it could then be heard by the Supreme Court of the United States. Perhaps, after a lapse of two or three years, a final decision would be rendered. During all these years, the individuals who desired to go on with the new railroad would be without means of knowing what they would ultimately be permitted to do. If, in the meantime, any person, organization, or other railroad company antagonistic to the new project desired to defeat the application before the commission or in the courts ample room would be found in the conditions which would arise to give them the opportunity to try to do so, thus prolonging and making more

expensive the effort on the part of the local citizens to build their railroad.

Therefore I unhesitatingly say to you that the obstructions placed in the way of this new railroad project by the bill now pending before you would be so expensive, so cumbersome, so obnoxious to the spirit of local enterprise that in most cases it would never be undertaken.

What is true of a section of Tennessee to which I have referred is true in many parts of the other States of the Union, especially all that part of the country outside of New England. It will be found that the people of the various localities where new railroad construction is needed to serve public convenience and necessity would rather go without the advantages which would accrue than undergo the red-tape proceedings and heavy expenses required by the conditions which would arise in the administration of this law.

And who will be benefited by thus strangling new railroads?

It may seem a strange fact, but, notwithstanding, it is a well established one, that the trunk lines to a very great extent discourage the building of new railroads, and this, to the mind inexperienced in railroad matters, seems all the more strange because it would appear that the trunk lines would be benefited by the building of smaller railroads, which would serve as feeders and bring them traffic. The larger railroads, however, are aware that the small road of to-day, which may be, perhaps, 50 miles in length, after it is developed and doing a prosperous business, may be extended 50 miles more and thus reach another trunk line connection; so that the road which is to-day a short line may gradually develop itself into a larger enterprise by making other extensions and connections, and ultimately develop into a trunk line itself; and this is what the existing railroads, out of their desire to hold the business they have, discourage.

Every railroad having its terminus in a large center of population, or the lines of which traverse developed sections of the country, desires as far as possible to fasten its control upon the traffic of that country. They not only discourage the building of steam railroads, but up to the present they have refused to make any track connections with, or to enter into agreements to interchange traffic with, any railroads operated by electric power.

If an example is needed of what the result will be of the passage of this bill containing the section, which I am discussing, it is unnecessary to look further than the State of New York. On July 1, 1907, the law creating the public-service commissions in that State went into effect. The policy of the commission for the second district, which embraces all of the State outside of Greater New York, has been a very conservative one in the matter of permitting railroads, whether new enterprises or those already established, to issue stocks and bonds for any purpose whatever. The effect of the law, coupled with the policy of the commission, is that new railroad construction in the State of New York has practically come to an end. I have before me a letter from the chairman of the public-service commission of the second district, in which he states that there is but one new application now pending before the commission by a new railroad company for what is termed "a certificate of public convenience and necessity."

There are in New York State many localities which sorely feel the need for new electric and steam railroads to serve the increasing

population and development of the State, yet the conditions imposed by this law and the restrictions added by the policy of the commission in respect to the privilege of issuing stocks and bonds are such that the initial enterprise necessary to start a new railroad project has been effectually destroyed. In some localities of New York State citizens have prepared petitions to be presented to, or have appointed committees to visit, the officials of existing railroads to ask them to build certain extensions of their roads and in every case have received little or no encouragement. In one instance, if the newspapers accurately report what took place, a committee of citizens in northern New York visited President Thomas, of the Lehigh Valley Railroad, and asked him to have his company construct an extension of his road through their locality. The answer they are reported to have received was that "investors will not put their money into any venture where they are sure not to make over 5 or 6 per cent, and where they are more likely to get a much smaller return, or none at all. It is too easy for them to find more inviting fields for their capital."

New York is a State of great wealth, her people are investing millions of capital annually in securities of railroad enterprises in other States where laws respecting investments are more liberal. Other millions are being invested in Canada, Mexico, Central and South America. At least much of this money would remain at home for local railroad development were it not for the existing policy of the State upon this subject.

An investment in a new railroad enterprise is hardly similar to any other kind of investment you might think of, for the reason that it is pretty generally understood, and should always be understood, by those who contract to purchase the bonds and stock of a new railroad that they must wait the development of the railroad's business for any profit which they expect to make.

I stated a few moments ago a hypothetical case of a railroad in Tennessee. Take that as an example again. From the time the individuals who took the initial steps to incorporate themselves into a company, and secured from the State a charter, until their railroad is actually completed and a track connection is made with a trunk line and the new road is engaged in the interchange of business (if the contours of the country are such through which the railroad runs that they offer no unusual obstruction to railroad building), it would be from two to three years before traffic would be regularly passed over that 50 miles of railroad. The successive steps to be taken, as I said before, would be to incorporate the company, then to make the surveys, adopt a location, comply with the laws of the State in that respect, have the surveys or location cross-sectioned, the quantities of material necessary to be moved ascertained, the size and cost of bridges estimated, the masonry calculated, and the necessary contracts placed for the material. All of this would consume, perhaps, the greater portion of a year, possibly more, before it was properly worked out. At the end of that time the grading of the line would probably be begun. This, with track laying, masonry, etc., would consume the greater portion of another year. Getting the equipment on the ground, getting the coal mines and sawmills in operation, and starting up the agricultural developments along the line of the railroad, so that actual

shipments in any quantity would be made, would consume more than another year. Altogether it would be at least five years from the time the projectors of the railroad took the initial steps until the railroad corporation was really engaged in earning money. Necessarily, the development of its business must be slow, because it must wait to start manufacturing, mining, and other enterprises, and to attract settlers who will improve the farms contiguous to the line and who will ship farm and dairy products, etc. It must wait until the farming element has so far developed that the incoming freights from fertilizers, agricultural implements, and farm supplies generally amount to a considerable item. It must wait until additional coal mines are opened up, perhaps coke ovens built, additional sawmills or manufactories are established. Yet all this time the capital which takes the initial risk and the grit and enterprise which promoted the construction of this particular railroad must wait for its rewards until the company has developed a sufficient business to pay, or until, by the slow process of the development of the section of the country through which this line is located, there has been such an enhancement of its business and, therefore, of its value as to create some profit. Now, suppose the individuals who have this enterprise in view and who want to put it through are limited, as they are in this bill, in issuing stock and bonds to the amount of the actual cash which is invested in this enterprise; where do they get any income upon their money during the three or four years that the railroad is being constructed and equipped and connected for business? Where do they get any income upon their investment during the lean years that the company is building up a business?

A railroad company is no exception to the general rule which applies to a dry goods business, a manufacturing business, or a banking business, in that it must establish itself, get ready to do business, and then, by the usual process of attracting trade, develop and build itself up until its business is a success.

This situation has been honestly overcome and fairly met in almost all instances that have come under my observation by the privilege, which is accorded under the laws which now exist, of issuing a reasonable amount of bonds and stock which may be given to the investors who first put their money into the enterprise as a bonus or reward to them for the risk which they take and for the time during which they wait for the enterprise to develop a paying business.

I do not want to be understood as saying that every new railroad that is constructed must wait a long number of years before its business begins to pay. I do want to be understood as saying, however, that in the great majority of cases, I would say three-fourths of the new railroads which are constructed do not pay for many years after they are constructed and put into operation. The objection which is made to issuing a reasonable amount of watered stock as a reward for the enterprise and as compensation for the risk taken by those who make the initial investment, is not founded upon a knowledge of the situation and a regard for the application of just principles to a business transaction. Such objection is more generally made by people who do not understand the nature of the business and who believe that every railroad enterprise, just because it is built and operated as a railroad, has some peculiar attributes about it that

makes it practically a gold mine, so far as its owners are concerned. Yet the very reverse of this is the truth. It is impossible to conceive of a business which is in many respects much more risky or hazardous. So many things can happen to a new railroad enterprise that will cut off its opportunity of income that the man who invests his money in its securities must necessarily do it with the knowledge that he is taking more or less risk as to the exact amount which will ever be returned to him.

And yet, why is this objection made to the pioneer who goes in and risks his capital in a new railroad and who assumes the labor and responsibility that is necessary? Let us look the situation squarely in the face and go back to our imaginary railroad in Tennessee. Here is, prospectively, a rich section of that State which is to be opened by this new railroad. We will assume the project is carried out, the railroad has been built, and that that section of the State has been opened up to settlers for development. Here in one locality we find coal lands have been opened, lumber mills have been started, a town site has been laid off, and a prosperous business community has sprung up. An association of individuals, feeling the necessity of having a bank, purchased a corner lot at the inception of the town, we will say, put up a brick building, and established a bank in it. When they first put up the building it was not worth what it cost, because the state of development at that time did not justify such an improvement. But with the lapse of time the town site has continued to attract settlers. In their proper order the butcher, the baker, the candlestick maker, have arrived; the doctor and the lawyer and the minister and all the other kinds of trade and business and professions which usually go into the enterprising town are now represented; the population has doubled itself several times. The corner building, where the bank is located, is worth five times as much as it was the day it was built; and why? Because with the growth of the community there has been a general enhancement of all kinds of property.

Here is a man located 5 miles from town along the line of this new railroad. He owned a farm of a thousand acres. The building of the railroad attracted settlers, and he has sold off three-quarters of his farm and only had 250 acres left. He sold for a good price, and the 250 acres left, which remains his home farm, is worth more money to-day, several times over, than before the railroad was built.

Some one has put down an oil or gas well; the opening of the coal mines has attracted a large number of employees; towns and villages are growing up along the railroad, and a general development of that section is going on. The people who made the initial investment and took the risk and put their money into the railroad enterprise made the whole situation possible, and is it right that they, too, should not be allowed to participate in the increase of values which has followed the general prosperity made possible through their enterprise and money? I say that such an objection is unfair and unwise and not founded upon an intelligent knowledge of the situation.

Take another situation. Suppose that this oil, or natural gas, or coal was not discovered in the earlier history of this railroad. Suppose the railroad, after struggling along for several years, should not pay the interest on its bonds which were purchased at the time the railroad was built. After successive defaults the bondholders became impatient and the bonds have been deposited with a bank under a



plan of reorganization which is about to take place. Would it be just to the people who had put their money in that project originally to have the Interstate Commerce Commission say, "Your property only cost so much, the stock and bonds originally given as a premium for your grit and enterprise in undertaking this transaction, which, perhaps, was not more than reasonable compensation for your risk, will not be allowed to be reissued to you. We will only allow you to issue a certain amount of stock and bonds, and upon that amount you can have an income of 5 or 6 per cent?"

You will find that, under the operation of this bill, when the people of the various States who desire to develop different sections of the State (as in the instance of the hypothetical case cited) go out into the business world to find capital for an enterprise in which that capital is bound to take grave speculative risks before it can establish its position, the opportunity for ultimate profit must be sufficiently large, sufficiently attractive, to induce the investment, or, otherwise, it will not be made. A man of sound judgment who is approached with a proposition to put his money into such an enterprise would very justly say that if he risks his money in such a corporation and can not make more than 5 or 6 per cent upon the investment, he will prefer to loan it on real-estate mortgage, or invest it in an annuity, or in some other form of fixed investment that would be absolutely safe, and where he would have no worry and no trouble concerning it.

When this condition of affairs arises how are you going to raise the capital to float a new railroad enterprise in undeveloped sections of the country? If you are allowed to put no water in the stock, if you are allowed to make no concessions whatever to the original investors who take the risk, where are you going to find the bankers or associations of individuals who will take the risk and advance the money?

Take it on the other hand and suppose that you issue \$20,000 of bonds per mile and \$20,000 of stock per mile for the original railroad enterprise. The road may not have cost to construct it over \$25,000 a mile; therefore \$15,000 of the capitalization represents pure water, or a margin on the investment. But the railroad, in course of time, is completed. If it turns out fortunate, settlers pour into the section, develop the country, and, after a reasonable time, it becomes a paying enterprise. What was originally given as a bonus and would ordinarily be called water now commands, by reason of the earnings of the property and the enhancement of its physical value, a fair price in the market. What right have we, who did not participate in the initial risk, who had no part in the enterprise, energy, and nerve which put this deal through, to now take the position that no interest shall be paid or no dividends granted on what was originally a bonus or watered stock? The people who owned the land, the coal, the lumber, the oil, the gas, the other mineral rights, the agricultural lands which waited for development and which they could not sell, were eager enough to have that railroad put through, to have somebody take the risk of investing the capital and take the time and trouble of building. They have made money in consequence of what has been done. Can they now justly say that the men who made all that possible, by the investment of their capital, shall not have the same proportionate reward that they themselves are seeking?

I do not want to stand in the position of saying that all loose capitalization of these enterprises can be justified in this way. I take the opposite view. I say that there should be a just and reasonable regulation, but the regulation as to small railroads whose lines lie entirely within the boundaries of a State should be regulated by the state authorities. I do not subscribe to the principle that the Federal Government should undertake to extend its jurisdiction within the boundaries of the State and take away from that State the exclusive right to regulate, as the people of that State see fit, its own internal affairs. A different proposition arises when a railroad is extended across a state line, because then it becomes an instrument of interstate commerce and properly comes within the direct control of the Federal Government; or, as a local line wholly within the boundaries of the State, some features of its business should properly be controlled by the Government. For instance, if the railroad line of which I have the honor to be the executive head should ship a carload of coal, as we frequently do, from the coal fields of Pennsylvania to the tide water at Perth Amboy, N. J., it is perfectly proper that such shipment should be under the jurisdiction of the federal authorities, because it is an act of interstate commerce, and can not be entirely regulated by the laws of any one State, for the transaction begins in one State and ends in another.

But the part of the railroad business which is interstate and the part which is intrastate should be distinguished between, and in this way: The building of a railroad line which is entirely independent of the control and management of, and is nowise identified with, an interstate railroad can in no way, in my opinion, become the object of concern to the federal authorities. It will not do to say that the evident purpose of this railroad is to do acts which are interstate commerce, because the railroad may do acts which are interstate commerce, and it will undoubtedly do acts which are not interstate commerce. For instance, if my railroad ships a carload of lumber from a point on its line to Philadelphia, the transaction is wholly within the boundaries of the State, and is not, in any way, an act of interstate commerce, so in that matter the Government should have no concern. You might as well say of the Baldwin Locomotive Works, which builds engines which operate over our railroad, that the building of the engine is an act of interstate commerce and should not cost only so much money, or should be supervised in some way, because it is an instrument which, when completed, will be used as an agency of interstate commerce. Likewise, you might as well say that the car builders who build cars that operate over our railroad are engaged in interstate commerce, because they are building cars that will be used by our road to haul carloads of merchandise from points on our road to points in other States, and therefore they are engaged in interstate commerce. If such car-building plants should desire to issue new stock and bonds, should they be required to comply with those laws? If the Baldwin Locomotive Works desires to extend its business, must it be required to comply with this special provision? If I want to build a railroad 25 or 30 miles long to serve the convenience and the necessity of the public in a certain locality of my State, must I be required to comply with the law? Would it not be an unwarranted interference with the internal affairs of the State?

Another condition, however, will arise. What is said here of a railroad whose lines are located wholly within the State will also be true of new railroads, the lines of which cross a state line. I have in mind now a project which is under my control for the time being and which will unite four or five lines of railroad not more than 200 miles from where we are to-day. The people living tributary to these lines have very poor access to the outside world. The city of Washington is, perhaps, the largest center of population, therefore, the best market, so it attracts passengers and the products of that section of the country. The people very much desire the construction of this railroad and the consolidation of these small railroads, and the filling of gaps between by new construction, which will give them another railroad, also access to Washington. If we are obliged to comply with the law now pending the project will not be carried out.

Who would suffer from this? Would it not be the people of these two or three States through which the railroad would pass and who might otherwise have the facilities which they desire? Two of the railroads included in this consolidation have been built by local capital in the same way as the hypothetical case cited in Tennessee. The bonds and stocks of these railroads in which the money was invested made possible the building of the railroad. They have never had any returns upon them whatever. Two of these railroads have paid but little more than their actual operating expenses, yet they have been the agency through which a considerable development has taken place. They are, unfortunately, expensive to operate in their present condition, and what may be true of one road in that respect may not be true of all. It is often by not having the right kind of management, by not having their proper share of the through freight rate from the connecting carrier, and other reasons of a diverse character may be found. The people who owned the stocks and bonds of these roads are willing to exchange them for a like amount in the new project. It would be practically impossible to carry that enterprise through under the provision of this act, because if we were limited to pay a hundred cents on the dollar and there had to be a revaluation of these railroads to determine just how much the people who have had their money there for years would be permitted to realize, the enterprise would be so obnoxious to every sense of local independence and pride that the whole thing would be abandoned and things would go along until, finally, some trunk-line railroad feeling the necessity of passing through that locality or availing itself of an opportunity for a cut-off or of obtaining the business that would accrue to it by doing so, would go in and buy up the stocks and bonds of these railroads for less than half of what they originally cost to build; and they can issue their stock without any loss because they are in a prosperous condition and their stock is selling above par. Is an operation of this character helping the people of the several States or is it hurting them? That is a question which must suggest itself to your very serious consideration.

Now, as to the remedy. It is not for me to indicate what your duties are. I do not wish to extend my activities in that direction, but this suggestion I would make: First, make it absolutely clear in this bill that it does not apply to electric and steam railroad lines that are located wholly within the boundaries of a State and which

are not owned or controlled in whole or in part by any interstate railroad. Let the bill provide that new railroad enterprises which are not controlled in whole or in part or in any way whatever by interstate railroads, but which are entirely independent, may issue their bonds and stock to an amount double the actual cost of building and equipping the railroad, taking into consideration the amount which would probably have to be advanced for interest and other purposes until the road is in successful operation.

If you do this, and simplify the procedure by which these matters can be heard and disposed of by the Interstate Commerce Commission, I believe that the effect of the law will be beneficial, because in a measure it will impose a restraint upon wild-cat financing of railroad enterprises, and, at the same time, it will leave sufficient latitude so that new enterprises may go on and by offering the customary and proper inducement be able to interest the necessary capital to allow them to do that which they desire.

**STATEMENT OF MR. FRANK S. MASTEN, OF THE FIRM OF GOULDER, HOLDING & MASTEN, OF CLEVELAND, OHIO, REPRESENTING THE DETROIT AND CLEVELAND NAVIGATION COMPANY AND THE CLEVELAND AND BUFFALO TRANSIT COMPANY.**

Mr. MASTEN. I want to call your attention to just a small part of the bill H. R. 17536: The provision on page 18, beginning at line 10 and extending to and including line 23, which relates to the establishment of through routes, joint rates, and joint classifications where the carriers themselves refuse or neglect to make such through routes and rates or can not agree on the division thereof. That they (the commission) may do this upon complaint, or the commission may on its own initiative. You will note in the eighteenth line that that authority to so establish through routes, rates, and joint classification is conferred when one of the connecting carriers is a water line, without any limitation. It is to that provision of the bill alone which I want to call your attention briefly.

The present fifteenth section of the interstate-commerce act gives a similar power to the Interstate Commerce Commission, but it is coupled with the provision that it can only be exercised when there is no other reasonable or satisfactory through route. In framing this bill that language, "no other reasonable or satisfactory" route, has been eliminated as to the rail lines, and it is so eliminated that the power of the commission under this bill, if enacted, would extend to the establishment of through routes, through rates, and joint classifications by rail and connecting water line, no matter how many other reasonable or satisfactory through routes exist. Just what constitutes a "connecting carrier" when a water line is involved which is not owned or controlled or managed by a rail carrier or has not voluntarily entered into an arrangement for continuous shipment, I should not want to define.

There has been a common rumor, or rather an understanding among the water lines—and that is the reason they have not been better prepared for this meeting, and that is the reason why no more of the lines are represented here—that there was no intention on the part of the administration—and we regard this as the administration bill, although we may be misinformed as to that; that there was no

intention or purpose to change the status of the water lines by this bill. If that be the fact, we say that it is the wish of the water lines to make it clear by simply putting back into this bill the restrictive language as to the connecting water line, that it shall not be exercised when a reasonable or satisfactory through route exists. We say nothing as to the rail lines; but the power should not be exercised as to rail and water if there is another reasonable or satisfactory route existing. We think that these water carriers should stand precisely as they do now until their relations to rail carriers are better understood, and the rate regulation by land, real or supposed abuses in which gave rise to the original act, are better in hand. It can then be better understood what, if any, regulation the common carrier by water may need in the public interest.

Mr. STAFFORD. Why should water lines be excepted?

Mr. MASTEN. There are very many reasons, but I would first say this: The characteristics of transportation by water and rail are essentially different. The waterway is free, open, and independent, without let or hindrance from any State or even the Federal Government, so long as a man has money to buy a ship, or build a ship, in accordance with the restrictive and even drastic regulations now in force, and to officer and man it in accordance with the federal laws. This Government has seen fit to recognize an essential difference between land transportation and water transportation, and the line has been drawn at the "shore line," and there is, covering water transportation, almost separate and distinct systems of jurisprudence, having in many elements no counterpart in land transportation. There are now on the statute books more than 450 sections, further amplified by 150 pages of interpretations and extensions, by the board of supervising inspectors, which also have the force and effect of law, when signed by the Secretary of Commerce and Labor and not in conflict with statute. Carriage by water has been under the the distinct control of the Government practically since we had a government. A main reason for that, when it comes to the question of regulation, is that it has been an acknowledged part of the public policy of the Government that travel and traffic by water should be fostered, and since the coming in of railroads, maintained as a natural competitive regulator of the land-rail carrier. If it is within the legislative intent to change this, then it is a reverse of a policy long acknowledged and followed; and if it is not so intended, and a mere inadvertence, then it should be corrected; the bill should be made definite.

The language employed shows an intent to extend jurisdiction of the commission as to water lines beyond that it has now, and if insisted upon it ought not to be enacted without a full and detailed investigation of the various interests of the water lines in the different parts of the country, because what might affect one locality beneficially might affect another in a very different way; might destroy the water carriage entirely. The general impression among the water carriers, so far as I am able to learn since their attention was called to this bill, is this, that while it might be of some benefit in some localities, while it might benefit an individual water carrier at one place, its ultimate result would be the railroadizing of the water lines, and then the elimination of that natural competition which, as I suggested, it has always been the policy of the Government to foster. A change of

this policy would be such a turning back from established ideas as only to be justified under the clearest public necessity, which we do not believe exists. The waterways are free to any citizen, their traffic will regulate itself naturally, and should be as little interfered with as consistent with the proper regulation of the carrier by land within the act; that is, to prevent their use in connection with rail carriers to defeat the purpose of the law.

Again, it is a mooted question as to whether section 20 of the Hepburn bill, fixing liability of an initial carrier, if a water carrier is within the act, does not run counter to the great marine legislation of this country, limiting the general liability of the vessel owners to the value of his interest in the ship and freight pending, and the special exemption of liability for loss of or damage to cargo by what is known as the Haster Act, passed in 1893.

The original commerce act, the amendment of 1906, and this bill seem to have been framed without special or even general consideration of the peculiarities of transportation by water, but they were saved in great part from molestation from the simple fact that there was no occasion or call to regulate transportation by water.

We believe that the water lines and the land lines represent two distinct classes of transportation, essentially distinct, and they should be treated as different, as they have been in the past, not allowing one to be confused with the other, and giving to each such corrective legislation as their own evils may warrant. Their independence should be maintained. When they are employed together, the rate regulation can be made effectual from the rail side, if it is not now.

While the original act, as interpreted by the commission, brought our through business, whether passenger or freight, within the jurisdiction of the commission, where it is done under a continuous arrangement, it has not worked to any great disadvantage, and the lines have become somewhat adjusted to, if not reconciled to, that as to rates.

The CHAIRMAN. Is this a change of that provision?

Mr. MASTEN. As to through routes, yes.

The CHAIRMAN. This is an amendment to section 15 of the interstate-commerce act. Section 1 of the interstate-commerce act defines corporations and persons who are covered by the act as follows:

That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement for a continuous carriage or shipment.

Those are the only water carriers that the interstate-commerce law applies to, including section 15—

Mr. MASTEN. But section 15 as proposed to be amended, referring to that character of transportation by rail and water, would give the right to make a through route and through rate only where no reasonable or statutory rate exists. This amendment eliminates that language "no other statutory rate exists," and makes us subject to as many rates and as many routes beyond the dock line as they might, in their wisdom, see fit to make, and compels the water lines connecting with rail lines to receive business at a rate and division the commission may fix, which almost necessarily involves port-to-port traffic, or at best is but a step removed.

The CHAIRMAN. Does it enlarge the class of persons covered by the act?

Mr. MASTEN. Not the class of water transportation which may come under the act, if they enter into that character of control. It simply extends the jurisdiction of the commission to compel a water carrier who happens to be a connecting carrier to enter into another arrangement, notwithstanding it may be already in a satisfactory arrangement and there be any number of satisfactory through routes. This undoubtedly grew out of the Enterprise case, which the Interstate Commerce Commission decided in 1905, I believe.

The CHAIRMAN. There is no common control by making a joint rate.

Mr. MASTEN. I agree with you perfectly that it should not be, but they have so held, and they are making us come in now on through business, freight or passenger, just on that thing. Where a line issues through bills of lading or through tickets, or honors the same issued by a rail carrier, then under the Social Circle case, decided in 162 U. S., I believe the Interstate Commerce Commission has exacted of all of these water lines, even independently owned and controlled, that they shall file their tariffs or concur in the rail carrier's tariff and come within the act in every regard. On May 4, 1908, they made the further conference order that if they voluntarily issued or accepted such billing or tickets, or had such arrangement, did one single, solitary iota of interstate business on through ticket or billing, by that voluntary act that brought all their interstate business, port to port, within the act and the jurisdiction of the commission; and it was only after rehearing and much argument that they set that order aside, and only claim jurisdiction as to the through business, except as to the matter of accounting, which is not settled. This was by a majority of one.

The CHAIRMAN. You say that the Interstate Commerce Commission now holds that an independent water line, not under the control of a railroad line, or not having a railroad line under its control, is governed by the Interstate Commerce Commission?

Mr. MASTEN. Yes, sir; on business done by through billing or ticketing; but we have a number of practical men here in the room who can answer that question from their own experience.

The CHAIRMAN. That certainly was not the intention.

Mr. MASTEN. It was not the intention of Congress, as we believe; it certainly was the intention to leave the water traffic alone. Now, by the language of the first section they, in connection with the decision of the Supreme Court in the Social Circle case, that the issuing of through bills of lading, or issuing a ticket to a single person, would subject that business, for that purpose at least, to all of the provisions of the act.

The CHAIRMAN. The Social Circle case did not have anything to do with the water lines.

Mr. MASTEN. I agree with you there, also, but they had so construed that case, and there is language there, taken in its literal meaning, which may be said to warrant their conclusion, although considered in the connection used, I doubt it.

Mr. ADAMSON. You do not insist that they may voluntarily sell through tickets and issue through bills of lading and yet escape being subject to the interstate-commerce law?

Mr. MASTEN. At present we are satisfied. While we think it was not intended to bring us under control, the railroads say it was. We desire to abide in every respect by the interstate-commerce act, if

it does touch us; they make us do it and we do do it. As the law stands now we can say, "We will quit doing through business;" we can stop right here and do no through business, and our interstate purely water traffic is entirely free; and as the law stands now, we can not be compelled to make through routes and rates, but may do so voluntarily.

Mr. MILLER. Was this Social Circle case decided on the long and short haul clause?

Mr. MASTEN. That entered into it, but it was an intermediate short railroad that thought to carve out its own business, and the Supreme Court said that they could not do it. They said, "You are in a joint arrangement for continuous passage over a through line or route, and in that respect you are in an arrangement for continuous carriage, subject to the act. The Interstate Commerce Commission has applied the same to rail and water when no other relation exists than through ticketing and billing.

Now, we are apprehensive of this character of legislation at this time. The Interstate Commerce Commission upon that slender thread went farther and said, If you voluntarily issue that bill of lading, or sell the ticket or accept and honor the same, you by that act necessarily bring the port-to-port business within the jurisdiction of the commission. We have the utmost faith in the good intent and high purpose of the commission. We feel, however, that our interests stand in such relation to the people that they ought not to be subjected to the hazard of constructions which would include rather than exclude this business from regulation, the necessity for which arose in another source.

Mr. STAFFORD. What is the case in which they overruled that?

Mr. MASTEN. I will get it for you; it was only a conference ruling.

Mr. STEVENS. You said that if this clause be enacted into law that it would tend to the "railroadizing" of water carriers. What did you mean by that?

Mr. MASTEN. We fear the ultimate effect of that would be to bring the water lines under the dominion of the rail lines. Now, there are practical men here who will be able to answer that question much better than I can, but we say as to this that we do not believe it ever was intended to regulate our rates and business, and we are fearful of each step of inclusion; it's a getting away from landmarks.

Mr. STEVENS. Going still further, you say that this would have the effect of bringing the water lines under the "dominion of the rail lines." By that do you mean that the rail lines would make the rates direct, and would direct what competition should be had, and all that sort of thing?

Mr. MASTEN. Yes, and a practical man, I think, will tell you that it would mean the extinguishment of a line, that it would mean to sell it—what I mean is, that if it is intended to depart from that long-established policy, we would ask that you give us more time, because the ramifications of the water business are such that it is not in our power to know just where we would land. The differences are very essential, and the result would be far-reaching. The eliminating of the proviso as to the existence of a reasonable or satisfactory through route is probably the outgrowth of the Enterprise case, where the Interstate Commerce Commission, where there was already a satisfactory route and rate, said that they could not, upon



the application of another water carrier, compel the land carriers to make another through route and rate. They did not say in that case that it called for the exercise of that power if they had it, because they closed their opinion by saying, in substance, "We do not know whether the facts in this case would justify this if we had the power."

It is a new thing to have water transportation dealt with in connection with rail transportation, and we think—

Mr. STEVENS. In the *Enterprise* case were they held to come within the act?

Mr. MASTEN. They made the application. There are even times where some of these old-established lines would be glad to have dominant power in their hands to compel a railroad to let it into another territory, but the immediate benefit, if any, is not commensurate with the possible ultimate harm.

Mr. STEVENS. Do you issue through tickets in conjunction with railroads?

Mr. MASTEN. Yes, sir; and we abide by the interstate-commerce law as to that business and publish rates or concur in published rates.

Mr. STEVENS. Is there any hardship in it?

Mr. MASTEN. We are working very well.

#### STATEMENT OF MR. EDWIN H. DUFF, OF WASHINGTON, D. C., REPRESENTING THE AMERICAN STEAMSHIP ASSOCIATION.

Mr. DUFF. Mr. Chairman and gentlemen, Mr. Masten has covered the case quite fully, and we subscribe to everything that he has stated, and when I say "we" I mean the American Steamship Association, comprising practically all of the coastwise vessels on the Atlantic and Gulf coasts.

Mr. STEVENS. Will you please file a list of those companies forming that association?

Mr. DUFF. Yes, sir; I have it right here.

(Following is the list referred to:)

#### AMERICAN STEAMSHIP ASSOCIATION.

Baltimore Steam Packet Company.  
Chesapeake Steamship Company.  
Clyde Line.  
Eastern Steamship Company.  
Mallory Steamship Line.  
Metropolitan Steamship Company.  
New England Coal and Coke Company.  
New York and Baltimore Transportation Company.  
New York and Cuba Mail Steamship Company.

New York and Porto Rico Steamship Company.  
Norfolk and Washington Steamboat Company.  
Ocean Steamship Company.  
Peninsular and Occidental Steamship Company.  
Old Dominion Steamship Company.  
Red "D" Line.  
Southern Steamship Company.  
United States Transportation Company.

Mr. DUFF. There is just one point that I would like to impress upon the committee with respect to the dissimilarity between the rail and water transportation, which we think the committee should have clearly in mind when legislating upon a subject of this character. In the first place, these steamship companies which are operating on through routes and joint rates with a railroad company do not object to coming within the provisions of the law so far as the Interstate Commerce Commission has construed the present act to apply. They do think, however, that after a through route has been established

with a railroad and water carrier between two points, that it is unreasonable, so long as the route is "satisfactory" and the rates are "reasonable," to clothe the Interstate Commerce Commission with power to establish an additional route and divide the business which is passing between the two points, and perhaps not in great volume, which has been established after long years and by the expenditure and possibly have the effect of driving the regular line of steamers—of a large amount of money and serving the public satisfactorily—out of business and leave a line of inadequate steamers to serve the public.

Mr. STEVENS. In other words, you want to have a monopoly fixed by law?

Mr. DUFF. Absolutely no, sir; and I will show you what I mean by my statement. In the first place, I said that you already have a line of first-class steamers between two points. Those steamers are regularly scheduled and have to go to sea; they have to have cargo, and they have to be seaworthy; they can not go unless they have a fair cargo in order that they may be seaworthy. Now, with a railroad company it is entirely different. It operates with railroad cars all about the same size. Their space can be adjusted to suit the cargo; but in the case of a steamer the cargo has to be adjusted to suit the space.

We are not here, gentlemen, to plead for legislation that will permit us to squeeze out competition, but we are simply asking for—

Mr. STEVENS. But that is what your argument would lead to.

Mr. DUFF. Oh, no, sir. If you have a satisfactory through route, and the rates are reasonable, what else do you want? We invite fair competition, but in the question of water carriage it has got to be on a fair basis.

Mr. ADAMSON. Do you object to the Interstate Commerce Commission permitting an additional through route to be established by the voluntary act of those who want to go into it, or simply compelling an additional route?

Mr. DUFF. Compelling an additional route. Where there is no satisfactory through route we do not object; there is no one objecting to making a through-route arrangement with railroad companies.

Mr. ADAMSON. Do you object where other people want to establish another through route on their own motion, or do you only object to the commission's compelling the formation of a through route?

Mr. DUFF. As Mr. Masten has stated, there is so very much to this subject that it is worthy of a great deal of time upon the part of the committee in going into it very carefully, so that the steamship companies will not be put in a position of seeming to come here before you and asking the committee to assist them in preventing competition. That is not their motive by any means. They simply want the committee to understand thoroughly the business of water carriage before passing this law. You can not regulate all water carriers. Take the tramp ship, for instance; take a sailing vessel; and take the private line (the man who runs his own ship for the transportation of his own cargoes); you can not regulate him. He has no terminals; he can load at the terminals of the shipper, and discharge his ship at the wharves of the consignee. Can you not see the discrimination and disadvantage to one if all are not regulated? The regular liners operating between two points, and serving the public, are not charging

unreasonable rates. The water carriers are not declaring large dividends, and they have been, and are now, competing against every kind of water craft and pirate on the high seas.

Mr. STEVENS. Oh, no; the water carriers do not, in domestic trade, have to compete with those.

Mr. DUFF. The American tramp and sail vessel all the time.

Take the case of one of the Clyde Line steamers, the *Algonquin*. The Clyde Line operates between New York and Jacksonville. There was a congestion of trade at Jacksonville not more than a couple of weeks ago, and it was desirable to send an additional steamer down from New York to relieve the congested condition. Would any member of the committee object to the law being so as to permit that steamer going out in the market to compete against tramp ships, sailing ships, or what not, in order to get a sufficient cargo and in order to enable her to safely navigate the ocean to Jacksonville?

Mr. STEVENS. Where was that freight destined to?

Mr. DUFF. I presume the freight was coming north, but I do not know exactly.

Mr. STEVENS. You do not pretend to say that any tramp ship would take that trade north, do you?

Mr. DUFF. No; but I do mean to say this: That the *Algonquin* wanted to go south; she had no freight and she had to get a cargo. The result in a case like this is that if they are under the act to regulate commerce they have specific rates, which, we will say, would be 30 cents. A tramp sailing vessel or a private vessel could come in and bid 10 cents, and get everything moving that way, and the regular liner would have to go light, because the law would not permit a change in the rate without notice. Is there any objection to that?

The CHAIRMAN. But that is not the proposition here, Mr. Duff. Tramp steamers can not make contracts for through shipments.

Mr. KENNEDY. I understand that a tramp ship could bid for a cargo.

The CHAIRMAN. I understand for a cargo from one terminal to another, but they don't make contracts for through shipments, and the only proposition here is on contracts for the through shipments.

Mr. DUFF. That is all, Mr. Chairman.

#### STATEMENT OF MR. E. E. OLCOTT, PRESIDENT AND GENERAL MANAGER HUDSON RIVER DAY LINE, OF NEW YORK CITY.

Mr. OLCOTT. I have no intention of asking for but a very short time, but I want to say a word about a unique condition that our company is in. I, however, would say, Mr. Chairman, that I take so much satisfaction from your remarks that there was no intention, unless there was railroad control, in bringing this under the Interstate Commerce Commission jurisdiction that I think any remarks of mine will be entirely superfluous.

The CHAIRMAN. But you must not pay any attention to the remarks that I inject here, for I do not have to stand by them.

Mr. OLCOTT. The Hudson River Day Line is purely within the State of New York, carrying passengers only, no freight at all, from New York to Albany on the Hudson River, a navigable free water highway. We have no railroad control; there is not one share of our stock owned by any railroad and we are only in the State of New

York. We run only for five months in the year, our principal business is tourist passenger business, and yet it has been ruled by the Interstate Commerce Commission that because we accept the tickets issued by railroads over our line we are under the jurisdiction of the Interstate Commerce Commission.

Mr. STEVENS. To what extent? What do you have to do because you are under that jurisdiction?

Mr. OLCOTT. We have to issue tariffs and file classifications. It has been suggested that you might bring up the uniform system of accounting, which would be very inconvenient for us, because, as I say, we carry no freight, and the principal basis of the bookkeeping and the system of accounting that has been suggested is for freight; and because we run only for five months in the year, during which time we keep our own very close watch over our income and outgo, and we do not divide our expenses into the different items which has been suggested might be introduced during the summer time. In the winter time, when we have plenty of time, we do more systematically divide everything in our own way, and we would very much object to this uniform system of accounting, because it would give important information, which is for our private use—a private company—to our competitors.

Mr. STEVENS. You do not claim that there is anything in this bill that compels that, do you?

Mr. OLCOTT. No; the system of accounting is another matter, and perhaps I should not have mentioned it. But it would seem to me to be very objectionable if, in the bills that are under discussion, and the Elkins and the Cummins bills, that clause where a "reasonable and satisfactory through route does not exist" should be eliminated. I think it will open the door to competition of an unfortunate nature for the simple reason that if the cheap, and possibly the inadequate or unsafe boats could come and carry passengers from New York to Albany, or vice versa, without giving the service that we give and without the restrictions that we are under, then it might be very unfortunate for us.

Mr. STEVENS. Before you go any further, would not any competitor or any competitive boat such as you describe be under exactly the same laws and the same system of inspection and supervision that you are under?

Mr. OLCOTT. Absolutely, so far as inspection is concerned.

Mr. STEVENS. Then why would they be unsafe?

Mr. OLCOTT. There are different classes of boats, very different, and different classes of accommodations. It makes a great difference. But the mere fact of our receiving railroad tickets and selling them is for the accommodation of the public and not largely for our own benefit. It would be very uncomfortable for the travelers up there if they had to go to Albany or to New York and lie over a train without their baggage being checked, and if they had to buy a separate ticket.

The CHAIRMAN. Isn't it a fact that you get a very large proportion of your business from people who buy through railroad tickets and either stop off at Albany and go to New York upon your line, or stop over at New York and go to Albany by your route?

Mr. OLCOTT. A great proportion of those people would desire to go and come, and to buy tickets from us.

The CHAIRMAN. Do you think they would buy tickets excepting through tickets upon which they could check their baggage through?

Mr. OLCOTT. I think a great many of them would; a large proportion of them. We do not consider that it would be disastrous to give it up entirely.

The CHAIRMAN. I have had the pleasure of riding on your line several times, and I am sure that I never would have done so if I had not had a through ticket.

Mr. OLCOTT. You are an exception, I think. But the interstate commerce act, it seems to me, speaking for our line alone, was designed for the regulation of railroads and not independent water lines which are purely intrastate; and the tendency of additional limitations and control is to make it much harder for us to make money, and the result of our not being able to get along if they did not issue through tickets would be that we should be driven to the wall, and then who would buy us up excepting the through railroads? Our case is unique and unusual; we carry no freight at all, and the incident of selling tickets does not seem to us to be sufficient to put us under the control of the Interstate Commerce Commission. We are getting along reasonably well as things are now, but new regulations would be more onerous still.

Mr. STEVENS. If you sell through tickets and make through rates and take baggage through, you are under the interstate-commerce law now as to that business.

Mr. OLCOTT. Yes, sir.

Mr. STEVENS. So that this act, if passed with this language in, would not change your status at all?

Mr. OLCOTT. I don't know anything about that, sir.

Mr. STEVENS. Well, in what way would it?

Mr. OLCOTT. It might relieve us from the limited liability that we are now under in regard to our steamers.

Mr. STEVENS. What is the language that changes your liability under existing law?

Mr. OLCOTT. I came here not prepared to speak at length; I am not a lawyer, and I can not analyze the whole bill carefully. I would have to refer to our lawyers for that.

Mr. STEVENS. We wish that somebody would place in the record the language that you claim would change it.

Mr. OLCOTT. I think Mr. Masten could answer that question perfectly.

The CHAIRMAN. Do you have any traffic arrangement with the New York Central Railroad?

Mr. OLCOTT. No; no traffic arrangement at all, excepting the same as we have with the Delaware and Hudson and the Pennsylvania Railroad, and I believe the other line that sells through tickets on our line—the same exactly as we have with the steamboats on Lake Champlain.

The CHAIRMAN. You say that there is no traffic arrangement, and then you make some exceptions.

Mr. OLCOTT. There is no traffic arrangement.

The CHAIRMAN. You have an arrangement by which you exchange service for tickets?

Mr. OLCOTT. The same as the other through lines have. There is no private arrangement at all; none whatever.

The CHAIRMAN. What do you mean by "private arrangement?" Do you have any exclusive arrangement under which these roads

agree to sell tickets good over no other steamship line between Albany and New York but yours?

Mr. OLCOTT. Absolutely not. If a person comes and wants to go from Philadelphia to Saratoga, and steps up to the Pennsylvania Railroad ticket office and says, "I want to go from New York to Albany," they would ask him which one of the four or five lines he would want to go upon, the West Shore, the New York Central, the day boats, or the night boats.

The CHAIRMAN. But that is not what I want to get at. You have an interchange of tickets with the New York Central Railroad. Does the New York Central Railroad in any way by agreement with you obligate itself not to give the same arrangement with some other new line or any other line of boats on the Hudson River?

Mr. OLCOTT. Absolutely not, sir.

The CHAIRMAN. They are at perfect liberty to patronize a line that would be started in opposition to you?

Mr. OLCOTT. So far as I know, there is no arrangement with us, absolutely; and that is the chief reason why we think we ought to be excluded from the operation of the interstate commerce law, because we are operating on a water highway, and the only way in which we maintain our business is by giving adequate service, the best that we think could be given, spending large amounts of money to keep abreast of the times, using the best of boats for the purpose; and we have no franchises and no special privileges of any kind.

The CHAIRMAN. If a new line should be started on the Hudson River, a boat line, under the existing law, there is nothing to prevent the New York Central Railroad from entering into a continuous traffic agreement with them, making a joint through route; and you think that under this law they would have that power?

Mr. OLCOTT. I think they would, sir.

The CHAIRMAN. And that would be starting a rival in business to your line, possibly?

Mr. OLCOTT. It certainly would likely have that tendency, sir.

Mr. STEVENS. Isn't that the point that you gentlemen should address yourselves to frankly, that you don't think it is wise, from a public standpoint and as a matter of public policy, to have that competition? That is what I would like to know about it.

Mr. OLCOTT. We have never had it, and we think it is against public policy to add restrictions and to discourage water lines. We have always felt perfectly free. We have never had a competitor, and we have felt perfectly willing to keep our service above the others, and in that way maintain our superiority. And it is not a narrow view, if other people want to put as much money in the business as we have put in it, and to acquire the terminal facilities. We do not fear competition, but we do fear added restrictions in our business by the Interstate Commerce Commission, compelling us to keep our books in certain ways and compelling us to do things which are unnecessary for the public business and which will increase and almost certainly lead to the wiping out of competition by the absorption of our lines by the railroads, and instead of being independent and free and open service to the public they will become monopolized by the railroads.

(At 11.55 a. m. a recess was taken until 2 p. m.)

## AFTER RECESS.

At the expiration of the recess the committee resumed its session.  
Mr. KENNEDY. Gentlemen, you may proceed.

**STATEMENT OF MR. FRANK S. MASTEN—Continued.**

Mr. MASTEN. One of the members of the committee this morning asked that some one put into the record the language of the act which furnished the limited liability, and the Harter Act, spoken of. I think the last speaker was not quite clear on that, and if I may do so I will try to clear it up on the record. The twentieth section of the Hepburn Act, so-called, provides in general terms that the initial carrier of an interstate shipment shall give a through bill of lading with receipt attached. It further provides, without going into detail, that that initial carrier shall be liable to the shipper, in the event of damage to the goods during transportation, with the right in the initial carrier to recover over against the carrier on whose line the damage was done. We will suppose that a shipment is sent, we will say, from Albany to Cleveland by way of Buffalo, on a lake line or vessel, and the initial carrier we will say is the New York Central, or any line reaching out of Buffalo—or a water line; it makes no difference. By a fault or error in navigation or in the management of the ship between Buffalo and Cleveland, we will say, that cargo of goods is damaged to the extent of \$10,000. By the twentieth section of the Hepburn Act the initial rail line is liable to the shipper for his damage. When that initial line comes to recover over against the lake line, on whose line the damage occurred, it will say, "No, I am not answerable for that because by the act of 1893, commonly called the Harter Act, I am exempt for damage to the cargo where it arises by reason of faults or errors in navigation or in the management of the ship." Query: Who shall stand the damage?

Under that twentieth section, on that character of shipment, whether it be voluntarily entered into by the lake line or whether the lake line is compelled to become a party to its carriage, can he answer, "I am not answerable. You must stand the loss?" And must the initial carrier come back to the shipper and say, "I can not get the relief afforded me by the act, and therefore I will not pay you?"

Let me carry it one step farther, to illustrate the other dangers. Let us suppose that exactly those same circumstances occur, and the ship is totally lost on the lakes. The initial carrier makes some payment, \$10,000, to the shipper, as he is required to do under this act, and he calls upon the owner of the lake line to make good that loss. The owner of the lake line says, "No. Section 4282 limits my liability for all damage done, occasioned, or incurred without my own personal privity or knowledge, to the value of the ship and the freight then pending. As the Supreme Court has construed that, that value must be taken at the end of the voyage on which the damage is done, occasioned, and incurred. If the ship is a total loss, the value of any interest in the ship and freight pending is nothing; and therefore I will not pay you at all."

Mr. STAFFORD. What case is that?

Mr. MASTEN. There are a great many. I will give you a reference to them. It is the thoroughly established law, and has been since

1851, when it was adopted in the statute. I know that lawyers more capable than I say that the effect of it would be to set aside, in that character of shipment, that provision of the general act in limitation of liability, and the special act as to cargo. My own notion is that it does not, but before your deliberations are closed you will probably have suggested to you that, whatever is done with the act, there should be an amendment put in there which shall say in terms that any transportation by water which may be affected by this act shall be subject to the laws and regulations applicable to transportation by water, so as to put the matter of whether those statutes are interfered with by that entirely beyond any question.

Mr. STAFFORD. Has section 20 of the Hepburn Act been construed in conjunction with the Harter Act, so far as the liability of the lake carriers is concerned, in the cases you instance?

Mr. MASTEN. I was told yesterday that one of the district judges for the southern district of New York had some time in the recent past held that it did not set it aside. Whether that has gone to appeal or not I am not advised. I have not seen the case reported, but I was told by a New York attorney yesterday that Judge Adams—I think it was—had made a ruling of that kind. That is my personal view. I know that the contrary view is entertained by a number of lawyers who have studied the question.

Following that, and putting another thing entirely beyond question, there has been at least no general intent on the part of anyone to affect in any manner the water-carrier's port-to-port business. As you requested it this morning, I will, if I may, read into the record, so that you may have it, the conference ruling to which reference was made this morning. The commission on May 4, 1908, made this conference ruling, known as "B No. 2:"

A steamboat line agreed upon a joint rate with a rail line for certain passenger and freight traffic. Held, that it could not unite with a railroad company in making a through route and joint rate on a particular traffic without subjecting all its interstate traffic to the provisions of the law and to the jurisdiction of the commission.

That was the conference ruling which I said had been reversed by the commission on application for a hearing by a majority of one.

So I think it will be suggested to you before long (and perhaps you may even have it before you now, as I know a gentleman has been preparing a brief for the purpose of submitting it to you), that there should be included at this time, whether this bill passes or not, a provision that nothing in this act shall be construed to in anywise affect a water-carrier's water haul, so that as much independence may be maintained for those water lines as may be.

Now, let me add one word. It is not a question of preserving a monopoly in any locality and it is not a question of selfishness, from our point of view. There has been, so far as I am informed, no public cry for any tightening of the reins on the water carriers. As I said this morning, there are and must be some localities, as there are under every general law, in which it may work a seeming injustice. That is one of the disadvantages that a particular locality or a particular individual may have to undergo in any community; but it seems to us that, a policy having been adopted, it ought not to be reverted upon unless there is a general public necessity calling for it, and it ought not to be done in an endeavor to meet the necessities of a particular locality or of a particular trade.



I believe it is a principle that is recognized that a general law which is made to fit a particular case is likely to be bad legislation; and I really feel that in this case it would be. And so, if it might be done, I should like, and most of the water lines would like, while they are finding their bearings and seeing how this thing works out, to have the water lines left in their present status as far as possible. It is difficult in any statute that bears upon the carriers by water to make it affect the private carrier, the "tramp." It does not affect the private carrier, the "tramp." All the legislation bearing upon that subject has one and the same thing in view, and in the regulating of transportation by water carriers all the instrumentalities have been brought in, even down to the extent that a man who owns a freight boat, as it stands now, unless he has a license, may not even ride on his own boat. I thank you.

Mr. KENNEDY. Just one moment. I am in total ignorance of those statutes affecting water carriage that you have been talking about, but it seems to me that if the law is as you say it is the Hepburn bill as it is drawn, making the initial carrier liable for damage to the goods that he takes, would be very unjust to the initial carrier if he has a joint route over some steamboat line——

Mr. MASTEN. I think so, too.

Mr. KENNEDY (continuing). And that law exempts the steamboat. In other words, the initial railroad would then have, under the Hepburn bill, to pay the damage without any sort of recourse against the steamboat.

Mr. MASTEN. That is my interpretation of it. I do not believe that those special statutes could be set aside and set at naught by anything except a specific reference to them. That is my own notion; but the courts do not always agree with my notion. Judge Adams, I understand, has taken that view, but courts of appeal sometimes reverse lower courts. The point you make is exactly the point I have in mind. Now, what is the effect of that? Does it set aside the special exemption given by the general maritime laws to water carriers, and leave the liability with the initial carrier, or does it carry both?

Mr. KENNEDY. The water carrier being only responsible to the value of his ship when it reaches its destination, if his ship has gone down by reason of negligence the initial rail carrier would have to respond primarily in damage, and look to the boat, which is on the bottom of the lake, for reimbursement.

Mr. MASTEN. Yes; on the bottom of the lake, where it had no value. Another thing: Under the interpretation of our Supreme Court that vessel may be fully insured, but that being a personal contract with the owner, in no way attaching to the ship, he may put that in his pocket. Our solicitude is as to what is the effect of that, and therefore we say that anything that tends to bring more of our property within their jurisdiction subjects us to an increased likelihood of those conditions arising.

If I am not taking too much time, I would like to refer to one other thing. By the general maritime law, when that vessel and her cargo once leaves port, I will say at Buffalo, if a common peril threatens the ship and cargo, the master of the ship is clothed by the maritime law with authority to sacrifice any part of the ship or cargo for the safety of the balance of the cargo; and by that same law all of that

which is saved, cargo, ship, and freight, shall on arrival at the point of destination be assessed in general average to make up the amount of that which is lost, less the lost part's contributive share. The initial carrier will be liable over to the shipper under the bill of lading and receipt for that share of the cargo's contribution to the general average; but if the initial carrier seeks to claim that over against the water carrier, the answer is that the adjustment is made in accordance with the maritime law, and that is "I will not pay for it." Will that be set aside?

Take another illustration. My goods are on the dock at Buffalo, I will say. A ship is alongside the dock. Your goods are on board the ship. After your goods have been fully loaded and they become attached to the ship, and the ship becomes attached to them, fire breaks out which threatens the dock and the goods on the dock, and the ship, and the goods on the ship. An independent vessel, or an independent individual, comes along—I mean an individual not connected with the municipality, whose duty it would be to extinguish the fire—and he extinguishes the fire on the dock and the goods on the dock, and the fire on the ship and the goods on the ship, and he saves half of the value of each one, we will say. My goods are on the dock, and I owe him nothing for saving that half of the value. Your goods are on the ship, and he has a claim in salvage against your goods, and a possessory right against the thing itself, a lien on it, and the amounts which the courts will give vary largely, depending on the size of the chancellor's foot, so to speak. Now, who shall make good that loss? The initial carrier?

Those are the reasons I suggest, and which will, as I say, be suggested to you; that so long as there is any character of water transportation, either by voluntary act of the line itself, or by the compulsory act of the commission under the law as it now stands or may be amended, there should be a provision which in term says that the transportation by water shall be subject to the laws and regulations applicable to that character of transportation.

You will find, if you examine any of the statutes to which I have referred, the limited liability act, section 4282, and the regulations up to 1885, that it does not depend on the vessel being a common carrier or a private carrier. It simply is transportation by water.

Mr. STEVENS. If we should make any amendment clearly excluding the water carriers from the operations of the provision that you have just alluded to, what would be the effect as to joint rates and routes between water carriers and rail carriers?

Mr. MASTEN. Rail carriers would do just exactly as they do now. They say to the water carrier, "Before you take any of our goods you will waive as to us your right to claim that benefit, or we will not give you any goods."

Mr. STEVENS. That is done now?

Mr. MASTEN. That is done now. I know on certain lines it is done, and I think done invariably. Where the rail carrier passes any of its goods over to the water carrier it requires the waiving of the water carrier's right to look to the Harter Act, which even exempts them from liability for damage to the cargo by reason of faults or errors in navigation or in the management of the ship. It only leaves the personal liability of the carrier by water where he himself—that is, the owner, or in case of a corporation the managing officer—is per-

sonally liable. The railroad carriers protect themselves now against that in some instances, I know.

Mr. STEVENS. Does that operate at all to prevent joint routes and rates, wherever it is for the advantage of the public that such should exist?

Mr. MASTEN. I do not feel that I am qualified to answer that question. I know that the question of the effect of the Harter Act and those special rights applicable to water carriers have been the subject of a great deal of negotiation between independent lines working in conjunction with railroad lines, but whether it has resulted in the exclusion of freight I do not know. But if the water carriers were to refuse to make an arrangement of that kind, they would get very little through freight. That is the best answer I can make. I am sorry I can not answer the question more specifically.

Mr. STEVENS. In the discussions on that amendment, I think it is very clear that the subject of the water carrier was not considered, and it was not considered in this committee.

Mr. MASTEN. I think it is a safe assertion, from an inspection of the rail-rate regulation, that practically no attention has been paid to the water lines, except an evident intent expressed in the reports: "Well, we are not going to touch that." I believe it to be a fact that there is neither a public necessity nor a public demand for it; and the only danger to the independence of the water line is that it will be included in some general provision, through inadvertence.

Mr. STEVENS. As you perhaps know, the House yesterday passed a very large river and harbor bill, carrying more than \$42,000,000 for the improvement of the waterways. It is the subject of a great deal of discussion among our people as to how transportation by water can be improved and what needs to be done by Congress to improve conditions so that we shall have more transportation by water and more competition by water, and better facilities by water. Now, what do you say as to this: In making these improvements what would be the effect of our bringing the water carriers under this act, with the different liabilities that you have discussed, or of exempting them from the liabilities you have discussed, or of leaving them out altogether? What would be your view about what ought to be done, from a broad public standpoint?

Mr. MASTEN. That is exactly the point of view from which I have been trying to approach it. The general good has been to improve and keep alive in every way consistent transportation by water. I did not know that that immense bill had passed. I am very glad to know it has, because it means a great deal to the lakes. The general purpose of that is to improve the channels and harbors, at least 95 per cent of the use of which is by a character of craft which no one has, to my knowledge, ever suggested should be controlled in any manner beyond what it is now—the private water carrier.

Mr. STEVENS. Under the operation of the acts that you have discussed have not more and more of the water carriers come under the control of the railroads? Has not that been increasingly true?

Mr. MASTEN. I would say that that is probably true, but I should not want to be saying that it was due to any specific thing other than the dominion of the rail line generally over transportation. Just how that is brought about is more of a transportation problem than I can answer.

Mr. STEVENS. I would like some one to discuss in what way the general navigation interests could be benefited the most, whether by being entirely independent or by having an arrangement of joint routes or joint rates by which they could compel the cooperation of the railroads, and in what way these various liabilities help or hinder.

Mr. MASTEN. That would probably involve in the first instance a division between the water lines which are distinctly water lines and independent and those controlled by the railroads. I have in mind one man who could, I think, discuss that matter very well, but I do not know whether he would be willing to do so or not or whether he would want to. That is too much of a transportation problem for me to undertake.

Mr. STEVENS. You notice that under the provisions of the law it rather seems to be the theory of those who drafted it that it would be for the best public interests to have the water lines brought under the jurisdiction of the commission, so far as through routes and rates are concerned—not discussing the question of liability. They seem to think that is the best policy. If there is anything to be said against that policy, from the standpoint of policy, we would like to have it.

Mr. MASTEN. I can only answer by saying that that would be subjecting to compulsion that which heretofore has been regarded as best serving public interests by being kept independent. Is there a public demand, a general public demand, or some extreme necessity? I know of neither.

Mr. STEVENS. Let us see about that. It has been stated in many places that independent water lines could not exist unless they had power to make through routes and rates to reach interior points; and on that account it has been pressed upon the various committees in Congress (and I know it was before the National Waterways Commission) that unless some such power be given the independent water lines they could not compete with the railroad lines between the same points—say between Boston or New York and points in Iowa; that an independent lake line could not compete with a through rail line.

Mr. MASTEN. My only answer to that is that I do not know of any independent line that has been forced out on the lakes, and I do know of independent lines that are operating there successfully now. The two lines that I represent are entirely independent, so far as any railroad control is concerned, and I think that the great majority of the lines on the lakes are independent lines with the exception of those that are known distinctively as being operated in connection with the great railroads centering at Buffalo, which are all well known. I know of no independent line that has been driven out for that reason. If there has been any, it is not within my knowledge.

Mr. STEVENS. You people think you could get along better and take your chances on the through rates?

Mr. MASTEN. My people think this: We have been doing fairly well. If there is to be a change of policy without the fullest opportunity to investigate it in all its details, we would rather, at least for temporary purposes, stay where we are until we can get our bearings. I am not answering for the other lines. I only answer for my own lines. I do not know about them. Is that all?

Mr. KENNEDY. We had some hearings here in which it was contended that the railroads, by a method of competition and by making

low rates between terminals on the Mississippi River, had practically put the steamboat out of commission down there between New Orleans and St. Louis.

Mr. MASTEN. That is a matter of common knowledge in the steamboat trade. I only know it from hearsay. I have no personal knowledge of it.

Mr. KENNEDY. It has been suggested, to remedy that, that we ought to fix minimum rates in that class of cases for the railroads.

Mr. MASTEN. In order to foster the water carriers?

Mr. KENNEDY. In order to help the water carriers.

Mr. MASTEN. I am in favor of anything that will aid them. I do not know whether that will or not, because the situation down there is different from what it is on the Lakes. I think it is a fact, as to the carrying trade on the Mississippi River, that the amount of product to be carried has diminished very greatly. Whether it is due to ordinary competition of the railroads or some ulterior matter, I do not know.

**STATEMENT OF MR. H. H. RAYMOND, VICE-PRESIDENT AND  
GENERAL MANAGER OF THE CLYDE STEAMSHIP COMPANY  
AND MALLORY STEAMSHIP COMPANY.**

Mr. RAYMOND. Mr. Chairman, Mr. Masten has so fully covered this matter that I find I have not anything to say after getting here, except that I represent the independent carriers, the independent lines, and that I will gladly answer any questions that you may put, from an operating standpoint. I judge that there has been an impression given here or that some of the members of the committee are under the impression that the independent carrier in his opposition to this proposed act wants to stifle competition. There is nothing in that. We welcome healthy, fair competition. The lines that I represent, with others, are really the regulators of the rates to the Southeast. While I am not informed as to the water rates all over the country, I judge that that is so wherever the railway line comes in competition with water. The rates to Georgia, Alabama, Tennessee, and all those places are made on combination of the water rate to the South Atlantic port plus the rail rate in the interior. We feel that the service we give to the public is what it wants, and to place our traffic, as our counsel says this will place it, under the jurisdiction of the commission on the port-to-port proposition, would be taking from us a large part of our tonnage and would necessitate the withdrawal of many ships, thereby curtailing the movement or the operation of the ships.

Mr. STAFFORD. Will you kindly elaborate how that would have that effect?

Mr. RAYMOND. It would have that effect unless you place the sailing vessel and the tramp or the unattached vessel under the same act. You permit them to make rates and take business against the regular carrier at will. We can not do it.

Mr. STAFFORD. As I understand, the tramp ship is at present barred out from competition with the coastal trade.

Mr. RAYMOND. No; you are getting a misunderstanding there.

Mr. STEVENS. That is the foreign trade.

Mr. STAFFORD. I mean the foreign trade.

Mr. RAYMOND. In using the term "tramp" I refer to the American "tramp"—a private vessel.

Mr. STAFFORD. There is competition in the coastal trade among domestic tramp ships and the regularly established lines, is there?

Mr. RAYMOND. Oh, yes. There are sailing vessels and barge lines. We can not operate under that bill if it places us under the bill and does not place the other people under it. There seems to be a good deal of doubt about it, and if it is not the intent of the framers of the bill to place the independent carriers under it, why not add something to it that clearly specifies it?

Mr. WANGER. Between what ports do your lines operate?

Mr. RAYMOND. I think there are in our fleet something like 75 or 80 vessels. They operate between Boston and practically every port to Mexico, and some Mexican ports and West Indian ports. The lines directly under my management operate from Boston to Charleston and Jacksonville; New York, Charleston, and Jacksonville; New York, Wilmington, and Georgetown; New York and Philadelphia; New York and Galveston; New York and Mobile; New York and Key West; New York and Tampa; New York and Santo Domingo. With allied lines we go to Cuba and Mexico.

Mr. WANGER. Do you have traffic arrangements with the trunk lines?

Mr. RAYMOND. Yes, sir; with all of them. Our opposition to forcing a connection with lines is that we do not believe it will create any more competition than is there now. We have no objection if anybody wants to voluntarily connect. We have not any objection to people going into our ports. If we can not hold our own, we ought not to be there.

Mr. WANGER. You want to be free to meet any rates which the tramp steamer may make?

Mr. RAYMOND. We want to be free to meet competition.

Mr. WANGER. Your companies are neither owned nor dominated by the rail lines?

Mr. RAYMOND. Not a single one of them, to the slightest extent, in any way, shape, or manner, by control, or ownership, or in any way.

Mr. STEVENS. Have you any objection to a provision of law that where you voluntarily make a joint rate, say from New York to Atlanta, with railroad companies, that the schedules filed shall show your proportion of the rate and the railroads' proportion of the rate? You have no objection to that?

Mr. RAYMOND. They have it now.

Mr. STEVENS. You have no objection to that, I say?

Mr. RAYMOND. No.

Mr. STEVENS. There have been some objections made by some of the steamship people, more especially in the foreign trade on the Pacific, to that provision. That is why I ask your views on it.

Mr. RAYMOND. We would prefer not to have it. We feel that it is a matter that the public is not interested in—the division of revenue.

Mr. STEVENS. Why not?

Mr. RAYMOND. But, as a matter of fact, the traffic agreements are all filed with the commission. Where there are arbitraries, so that rates are made which they really do not understand, we undertake to protect the initial carrier against what Mr. Masten was discussing a few minutes ago, by the insurance of certain traffic to various parts

of the country. We have that to-day in competition with the rail rate.

Mr. STEVENS. That requirement that you shall and do file those traffic agreements and show those rates does not have any effect on your getting business?

Mr. RAYMOND. No, sir; we do not file them as a matter of fact of our own accord. The rail lines file them for us, because we claim that we are not within the jurisdiction of the commission, and they hold so themselves, in port-to-port traffic.

Mr. STAFFORD. What proportion of the traffic destined for interior points carried on the coastal steamers is carried under through rates and what is carried merely on local rates?

Mr. RAYMOND. Most of it ultimately reaches the interior, but what is billed through at the beginning is probably less than 35 per cent of it—perhaps 35 per cent.

Mr. KENNEDY. It has occurred to me that if the right was conferred upon a line of steamers such as you manage and control to compel a railroad to make a through rate with you, with the jurisdiction in the Interstate Commerce Commission to adjust and to make fair that joint rate, and the division of the money on that joint rate, it would strengthen and help the water carrier.

Mr. RAYMOND. It would if they handled it the way you think they should, under that statement; but—

Mr. KENNEDY. I can not rightly understand why you are opposed to some such arrangement as that. I have understood that your coastwise trade has been having a pretty hard time against the railroads by reason of the way in which they make their rates.

Mr. RAYMOND. In some cases it is. In others it is not. As I say, the rates to the territory that we serve in the South are made on combinations through to port. My objection to forcing a railroad to connect with another line is that it might not be for the good of the public, because you would have a lot of inferior lines, possibly, that were there for some other motive than for public service.

Mr. KENNEDY. Most of your freight that you carry down to Charleston is destined to some interior point, is it not?

Mr. RAYMOND. Well, hardly. Perhaps 50 per cent that goes to Charleston goes in that way. A lot of it, though, goes into stores there and reaches the interior later.

Mr. KENNEDY. If you could contract to carry to some point inland 50 or 100 miles and compel the railroad to make a fair joint rate with you, it would help your business rather than hurt it, would it not?

Mr. RAYMOND. We have that, and we have not any objection to anybody else getting it in the same way; but we do object to men coming along, as they did in the Enterprise line, and putting on a steamer line at lower rates with the object of driving off reliable competition, and then restoring the rates to any figure they want. My principal objection to this bill, as I interpret it, is that it affects our port-to-port traffic, as said by Mr. Masten, and it would only result in one thing. It would drive the ships of that type and class off of the seas. They could not compete with the other vessels.

Mr. STAFFORD. Might it not have the effect of enabling the railroad which is in opposition to the carrier on the sea to secretly establish a tramp line to drive the established line out of business?

Mr. RAYMOND. Just exactly so.

Mr. KNOWLAND. If the tramp lines could be brought under the same regulation you would have less objection, would you not?

Mr. RAYMOND. If that is possible. I do not know. We would have less objection; yes. How you can regulate the tramp carrier, the sailing vessel, and the barge line—

Mr. KNOWLAND. I am just offering that as a supposition, without saying that it can be done.

Mr. RAYMOND. Yes. I thank you.

**STATEMENT OF MR. EDWARD F. MURRAY, PRESIDENT OF  
MURRAY'S LINE.**

Mr. MURRAY. This morning I wished to be heard, but I do not think I need be heard now. I think I was entirely misinformed as to the character of the hearing here. I understood that this was a hearing for the purpose of putting the accounting of water lines under the jurisdiction of the Interstate Commerce Commission; but from what I have heard I do not think that is the purpose of it. That I should oppose most strenuously, because I am in a position where the tramp is my competitor. I run a line of boats on the Hudson River, from New York to Albany and Troy. I am subject to the competition of every canaler, and if I were obliged to give away all the little secrets that we have in our business (and there are only a few of them in the transportation business) I would be at a decided disadvantage against the tramp, and the private boatman, who does not own any docks, or have any offices, and such things, but simply wants to get enough out of his boat to make him a living. But I do not understand that that is the purpose of this hearing. Am I right?

Mr. STEVENS. What we want you to discuss is whether or not it would be advisable to give the Interstate Commerce Commission authority to make joint routes and rates where a satisfactory route already exists. That is the point.

Mr. MURRAY. That is rather a delicate point with me. I do not know just how to take it. I run a line of boats that are at the mercy of a railroad.

Mr. STEVENS. There is a satisfactory route that already exists?

Mr. MURRAY. That is, a route that is satisfactory to me. It was not satisfactory to them. They wanted to change the divisions, and did change them. They cut out our tariffs entirely. They wanted us to reduce our division. While I would not want any provision for the Interstate Commerce Commission to have the management of business between port and port, because I could not stand it, I should be glad if there was some power that the water lines could appeal to when the railroads do not give them proper divisions of through rates.

Mr. STEVENS. You would have no objection to having the Interstate Commerce Commission have power to make rates, say, to the northern part of New York State, would you?

Mr. MURRAY. I would not, when the railroads will not treat the water lines fairly. I have in mind a case in my own business, where a railroad line wants to charge me about 30 cents a hundred for carrying the same class of freight the same distance that they carry it for somebody else for 10 cents. If there is not some provision, some law, some power to control that situation, there is nothing in



the world to prevent the railroads from choking all competition and giving preferential rates or facilities to their favored connection.

Mr. STEVENS. Under the present law they could give a monopoly to the favored connection?

Mr. MURRAY. Yes; that is just what they have done; and they gave my competitor as good rates as they gave me, and I do not know but they gave better. I never inquired, because it was not my business, and there was no way I could find out if I wanted to.

Mr. STEVENS. And they could refuse you the same rates and the same facilities because they would not make a joint route with you?

Mr. MURRAY. We had a division of rates that had been in force thirty-odd years, and a new management came in which wanted to get some of my earnings to help their earnings—I presume that was the case. They asked me to reduce the rates that we had had in for thirty-odd years, and I refused to do it. They simply canceled my tariffs, state and interstate, and I was for months and months without any through rate whatever.

Mr. STEVENS. What did you do? When did that occur?

Mr. MURRAY. It occurred last year, sir.

Mr. STEVENS. What did you do? Did you apply to the Interstate Commerce Commission?

Mr. MURRAY. I applied to the public-service commission first. They did not have jurisdiction, because the public-service law in our State is not quite as broad in that respect as the interstate commerce law; but it cost me about \$2,000 in legal expenses to find out that the public-service commission did not have jurisdiction.

Mr. STEVENS. Did you then apply to the Interstate Commerce Commission?

Mr. MURRAY. I applied to the Interstate Commerce Commission, but in the meantime they modified their rulings and put our tariffs in, and we are now getting along the best way we can.

Mr. STEVENS. You think it would be for the interest of lines like yours to give the Interstate Commerce Commission authority under such circumstances to make—

Mr. MURRAY. Under certain conditions; but if they can have authority over me and not over my competitor, then I am out of business.

Mr. STEVENS. What do you mean by your competitor?

Mr. MURRAY. Every canal captain that has his own boat, and every man who has a barge, and every man who comes up the river with a sailing vessel, who has no power except the Almighty above him. He is the man I am competing against. It is not the regularly established lines.

Mr. STEVENS. We, of course, have authority to put him under our jurisdiction if we see fit; but we probably will not.

Mr. MURRAY. If you have authority to put them under your jurisdiction, you can do more than the Almighty can.

Mr. STEVENS. We can provide regulations under which they may carry freight from place to place in interstate and foreign traffic. I do not think there is any doubt about it. But, of course, we will not do it. Nobody pretends to say that we will. If that be not done, then what do you say about the advisability of keeping you in the same status, and not giving you any more power and control than they have; not giving you any more authority to go to the

Interstate Commerce Commission to enforce through routes or through rates than they have?

Mr. MURRAY. Then I would be in the same position as I was last year.

Mr. STEVENS. There is such a provision now.

Mr. MURRAY. Where a satisfactory route is established, that means only one.

Mr. STEVENS. Yes.

Mr. MURRAY. And that means the preferential route, if they have a mind to take advantage of it.

Mr. STEVENS. You would not object to it so much if there was a provision that it should apply equally to your competitors?

Mr. MURRAY. I would not feel the objection to it that I would otherwise.

Mr. STEVENS. Suppose that we did not deem it advisable, and unquestionably we should not deem it advisable, to extend it to your competitors, what would you have to say?

Mr. MURRAY. Then you are simply putting me at a disadvantage.

Mr. STEVENS. It is a question of public policy. What do you think would be best for the men situated as you are—to leave you out entirely, to let you fight it out with the railroads as best you can, or give you a chance—

Mr. MURRAY. I am in favor of you giving me a chance, and I am perfectly willing—

Mr. STEVENS. Even though your independent competitors, the canal boats and the sailing vessels, are not placed under the same restrictions that you are?

Mr. MURRAY. That reaches too far for me to say what that would reach to. There is no way that I could assume to make judgment in a case like that.

Mr. STEVENS. Well, that is the situation that is before us.

Mr. MURRAY. I do know that this country has spent hundreds of millions of dollars to improve the waterways of this country, and is ready to spend hundreds of millions of dollars more; but it will be wasted unless there is some power that will compel the railroads to interchange business with water lines on a fair basis, because there is not any point in this country that I know of that has enough business on the water lines to maintain first-class lines such as you should have.

Mr. STEVENS. That is just exactly what this bill is designed to do.

Mr. MURRAY. Yes; I am perfectly frank in the matter. There is nothing else to do. I think there is not enough business between St. Louis and New Orleans to maintain a first-class line unless, at the different points along that river where railroads and water lines can connect, there is some power to compel the railroads to connect on a fair basis.

Mr. KENNEDY. It seems to me that you want this bill just as it is proposed.

Mr. MURRAY. I do not know who the author of the bill is, sir.

Mr. KENNEDY. The Interstate Commerce Commission would never compel a railroad to make a joint rate with the tramp or the canal boat, or these irregular boats which you speak of as being your competitors.

Mr. MURRAY. I do not know just what they might do, sir, for the purpose of eliminating certain competition or for the purpose of reducing the values of property or other things. I am in the same

position that my friend Mr. Raymond is with his lines, only in a much smaller respect. In the case of his competition the Almighty furnished his competitors the right of way and greased the rails for them just the same as He did mine, and I do not know any power that can control them.

Mr. KENNEDY. But if you were operating your line, this traffic coming over the railroads would have a right to go to the commission and insist that a joint rate be fixed.

Mr. MURRAY. Just go a little bit further, if you please—a joint rate and a fair division.

Mr. KENNEDY. And a fair division.

Mr. MURRAY. I believe that there should be something in the law providing that the railroads should not be permitted to charge any more for the same service than they charge to their most favored connection or patron.

Mr. KENNEDY. As I understand, the commission have a right to adjust that joint rate and make it fair between the parties. The railroads in taking freight to come down to their terminals that you connect with, and then go over your line or that of a tramp to the points you touch from that connecting point, have to publish their schedules of rates. They publish the through rate?

Mr. MURRAY. The through rate.

Mr. KENNEDY. Now, they can not get a canal boat to haul it cheaper. They are not permitted to pay the canal boat less than their published rate.

Mr. MURRAY. I do not think you have that right, sir. I do not think that question comes in at all. We have competitors in the canal boats, and the railroads get more out of the business that comes by canal boats than they get out of our line. The canal-boat man can afford to carry it for less than I can. He has no dock expenses, no office expenses, no internal expenses, no organization to maintain.

Mr. KENNEDY. But he is running a regular transportation line and would probably be a proper party for a through rate for heavy freight.

Mr. RICHARDSON. I understood you to say just now that you did not believe this great waterways movement would be a success, finally, unless the railroads could be made to do business on a fair basis with water transportation.

Mr. MURRAY. Unless you treat them fairly in the matter of terminals, and so forth.

Mr. RICHARDSON. What do you mean by that?

Mr. MURRAY. I mean unless there is some power to compel the railroads to put in through rates and to make proper divisions.

Mr. RICHARDSON. Do you not think the Interstate Commerce Commission ought to have the power, where it ascertains from investigation or in any other proper way that the railroads are lowering their rates for the purpose of breaking down water competition, to forbid that?

Mr. MURRAY. I have never heard of a case of that kind, except that I have incidentally heard that that is the situation on the Mississippi River. It is not the situation on the Hudson River. I am now speaking of the New York Central and Hudson River road and the West Shore road, because they are the ones that come in direct competition with the Hudson River and the Erie Canal. The rates

between all points are maintained by those railroads on a living business basis.

Mr. RICHARDSON. Take your own illustration about the different points from St. Louis down to New Orleans, on the Mississippi River, where the boats come in competition with a railroad that touches the bank somewhere: Would it not be an easy matter for the railroads to so adjust their rates as to drive the water line out of business?

Mr. MURRAY. I presume they might. I did not know that that had been done. It has not been done up in our territory, and that is the reason I say what I do.

Mr. RICHARDSON. If they could increase their traffic, their trade, and their patronage by doing that, why could they not do it, and drive the water lines out of business, and then, after they go out of business, raise their rates?

Mr. MURRAY. They could do it without raising their rates again if they could get enough revenue out of the rest of their business that was not competitive.

Mr. RICHARDSON. It seems to me, as I recall it, that the National Waterways Commission made some such suggestion as that, Mr. Stevens.

Mr. STEVENS. There was some such suggestion made.

Mr. RICHARDSON. That is to say, that the Interstate Commerce Commission ought to be clothed with such authority as would enable it to prevent that very thing.

Mr. MURRAY. That was one of the arguments made before the Waterways Convention. But such a condition of affairs does not exist in our territory, and never has existed.

Mr. WANGER. The railroads have never put their rates so low as to drive the water craft out of business?

Mr. MURRAY. No, sir; they have not, sir. I have been in business a lifetime—forty-seven years. Originally the railroads on the Hudson River made what were called flat rates. They agreed with the large shippers to carry all their freight at a certain rate by the year between New York and Albany and Troy. But of all late years, for the last twenty-five or thirty years, everything has been done on a different basis. The railroads up in our territory during that time have gotten good, fair pay for the work they have done. So much has that been so that although we are running a barge line in competition with them our rates on the higher classes are only a few cents a hundred less than the railroad rates, because we can not afford to take them much lower. For instance, the all-rail rate from New York to Troy on first-class freight is 26 cents a hundred, whereas our rate is 20 cents.

Mr. RICHARDSON. Then your contention is that there ought to be some power somewhere to make railroads establish through joint rates with water transportation lines?

Mr. MURRAY. Yes, sir; because if that is not done the water business alone can not exist.

Mr. RICHARDSON. It can not exist because the transportation upon the steam railroad is so much more expeditious and rapid that if you run them at the same rate the people will naturally prefer the railroad?

Mr. MURRAY. That is not the reason I give, sir, for that.

Mr. RICHARDSON. What is it?

Mr. MURRAY. It is because there is not a sufficient volume of business on the water to maintain first-class water lines. The water-

line business must go to the distributing point and act as a feeder to the railroads, and the railroads must act as feeders to the water lines.

Mr. RICHARDSON. But, as I understand, in order to make the inland waterways movement a success, there will have to be a joint terminal between the steam roads and the waterway transportation line?

Mr. MURRAY. Yes, sir; they would have to be established at the place where the volume of the business would require it; and they would have to be established on some basis whereby the waterways lines would pay their fair share of the cost of maintaining them. There is an equitable point in everything. Water lines are not entitled to everything. I think the railroads are entitled to a fair revenue, just as well as the men who put their money into water lines.

Mr. STAFFORD. As I understand you, the rail rates in the competing territory in which you are engaged are the same throughout the year? The condition is not as it is in the Mississippi Valley, where the rail rates vary with the time of the year, depending on whether or not there is competition through the navigation on the Mississippi River?

Mr. MURRAY. With us the tariffs are issued, and there has not been a variation (except that once in a while there is a commodity put in) in ten or more years. We have not the condition that you speak of as existing on the Mississippi between St. Louis and New Orleans at all. We never have had it.

#### FURTHER STATEMENT OF MR. H. H. RAYMOND.

Mr. RAYMOND. Mr. Chairman, my friend Mr. Murray is talking on one proposition and I have been trying to address myself to the other. He has a different situation. He has inland waterways, and he has a different character of vessels and of service than we have on the ocean. Ours goes up into millions of dollars. One vessel that we launched last year cost over a million dollars. We should not be compared with the barge service on the Hudson River, or the inland waterways of the Mississippi, where there might be abuses on the part of the railroads.

I contend, with all the emphasis that I can, that to force railroads to connect at ports with water lines that might be of a tramp character or irresponsible would not encourage or foster the merchant marine but would hurt it. The railroads could come along, if they wished, and put on two or three cheap boats and run the rates down between any of the North and South Atlantic ports or North Atlantic and Gulf ports, and wipe these regular lines out of existence; and then they would have what they wanted. They would have the rail haul.

Mr. STEVENS. Do you know whether that has ever been done?

Mr. RAYMOND. Yes, sir; it was done on Long Island Sound.

Mr. STEVENS. What road did that—the Long Island road?

Mr. RAYMOND. The New Haven road.

Mr. STEVENS. The New Haven road did that?

Mr. RAYMOND. Yes, sir.

Mr. STEVENS. Between what ports?

Mr. RAYMOND. Between New York and Providence and Fall River. They put on a cheap line. They bought two or three cheap boats. It was called the "Enterprise case," and was handled by the

Interstate Commerce Commission. They put on some new lines, and ran some cheap boats. They called it the Enterprise Steamship Company. I think that was the name of it.

Mr. STEVENS. Was that backed by the New Haven Railroad?

Mr. RAYMOND. They ran it under cover. Some of their old boats were turned over to somebody else to operate, to drive off the opposition—to drive off a regular, established water line.

Mr. RICHARDSON. How do you propose to remedy that? You may have suggested a remedy somewhere in your remarks, but I did not hear it; and I should like to hear it.

Mr. RAYMOND. I do not know how you would remedy it, except that where there is a reasonable route and rate, where a satisfactory route exists, I do not believe the commission should be given power to force the connection of the steamship line with the railroad if they do not want to do it.

Mr. STEVENS. In that case the New Haven road did own a reasonable line, a good line?

Mr. RAYMOND. They did.

Mr. STEVENS. And they tested the point as to whether a cheap line could be allowed to compete with their well-established, first-class line?

Mr. RAYMOND. There was a pretty good line there.

Mr. STEVENS. What line was that?

Mr. MURRAY. The Providence Line and the Fall River Line.

Mr. STEVENS. Those were owned by the New Haven Line?

Mr. MURRAY. They were not originally, sir. They were at one time all independent lines. The New Haven road has gobbled up the old owners.

Mr. STEVENS. They have been under the Old Colony Steamship Company for a good many years, have they not?

Mr. MURRAY. They have.

Mr. STEVENS. And the Old Colony Steamship Company is owned by the New Haven road?

Mr. MURRAY. Yes, sir.

Mr. STEVENS. Your point is, Mr. Raymond, that the New Haven road, to test the question as to whether or not a cheap line could be used to run out a well-established line, backed this Enterprise Company in testing that provision of the law? They wanted to ascertain whether or not, when a satisfactory route existed, a cheaper line would be allowed to compete with it? That was the illustration you used, was it?

Mr. RAYMOND. Well, not exactly; no, sir.

Mr. STEVENS. But that is the case that you mentioned.

Mr. RAYMOND. That is the case. If this power is put in the hands of the railroads, and a similar condition existed between New York and Charleston, for instance, or New York and Jacksonville, or Galveston, or anywhere else, and they could run those boats, they would withdraw them, as they did in the case of the Sound.

Mr. STEVENS. They did not withdraw their Fall River and Providence boats.

Mr. RAYMOND. They did not withdraw their Fall River and Providence boats. They let those established lines stay there.

Mr. STEVENS. They can do the same thing in competing with you, can they not?

Mr. RAYMOND. They could, but they have not got them.

Mr. STEVENS. But they can establish them, if they want to.

Mr. RAYMOND. But you are protecting the railroads against the water carriers.

Mr. STEVENS. No; we want to protect the water carriers against the railroads. We want to do just the other thing.

Mr. RAYMOND. In my humble judgment, you can not do it by throwing the bars down at the ports.

Mr. STEVENS. We want to encourage the independent carriers. I think that is the public policy. The theory of the provision is that we can encourage them best by compelling the railroads to give them the same facilities that they give their own boats.

Mr. RAYMOND. I think that theory is wrong. I can illustrate what I mean, though I do not like to use cases that are within my own knowledge and on our own lines. I do not think the public are benefited by the character of competition that exists to-day between New York, say, and Texas. Here are the boats of the Southern Pacific Company—it is true that that is a rail line—and the boats of our company, that cost anywhere from three hundred and fifty or four hundred thousand dollars to a million and a half dollars apiece. The service is not excelled anywhere, and the rates are not high. Suppose a man comes in with 8 or 9 knot boats of cheap construction and operation, without terminals, organization, or anything else, and makes rates there that he thinks are ruinous, for the purpose, as we believe (as has happened in other cases), of being purchased. To permit that man, whoever he may be, or that class of boats, to connect with the railroad, and thereby to increase his routes and keep his boat line there indefinitely, is not doing the public any good, because it will ultimately force either our service and that of the other good lines down to his class or eliminate him, or eliminate us. One of those things must happen.

Mr. STEVENS. Let us take another view of the same situation. Between what ports does the Mallory Line ply?

Mr. RAYMOND. Between New York and Galveston.

Mr. STEVENS. Between what ports does the Southern Pacific Company's Line, the Morgan Line, ply?

Mr. RAYMOND. Between New York and Galveston.

Mr. STEVENS. The Morgan Line is owned and controlled by the Southern Pacific Railroad Company?

Mr. RAYMOND. That is right.

Mr. STEVENS. And of course the Southern Pacific Railroad Company gives the Morgan Line through routes and rates wherever necessary to carry its traffic. Do you get similar routes and facilities from the Southern Pacific to carry your traffic in competition with the Morgan Line?

Mr. RAYMOND. Absolutely; and we give a similar service.

Mr. STEVENS. You give just as good service and you get just as good rates and routes?

Mr. RAYMOND. Yes, sir.

Mr. STEVENS. Suppose the Southern Pacific should say: "We have just as good a line as is necessary. We have a satisfactory route and rate. We think, Mr. Mallory Line, that we will not give you any more through routes and rates, and we will decline to prorate with you. We have a perfectly good line of our own." Under the law at

present you could not force the Southern Pacific Railroad Company to give you through rates and routes to enable you to compete with your competitor. Then where would you be?

Mr. RAYMOND. We would work, as we do right up and down the coast, with their competitors—the Santa Fe, or the M., K. & T.—reaching the same country, as is the case on the coast.

Mr. STEVENS. Then you would not want to be placed in an even situation with the Morgan Line?

Mr. RAYMOND. I contend that we would be in an even situation with them, because we have rails to Dallas and to Fort Worth and to all the other important points just the same as they have.

Mr. STEVENS. Suppose the Southern Pacific—as railroads sometimes have been known to do—should influence the actions of all the other lines that reach common points, and you could not get through routes and rates with them, what would you say?

Mr. RAYMOND. I can not imagine that condition prevailing.

Mr. STEVENS. You do not think that condition is likely to prevail?

Mr. RAYMOND. No, sir; I do not.

Mr. STEVENS. And you think it would be entirely safe to leave this question open to the good faith and good will of the railroad companies, and not have the power to compel them to allow competition in a case such as I have stated?

Mr. RAYMOND. I do where a reasonable rate and route that is satisfactory to the public is already in existence.

Mr. STEVENS. And where that reasonable route is entirely dependent on the sufferance of the railroad company?

Mr. RAYMOND. I do not think any of them are that way, in the companies that I represent, in the country we reach.

Mr. STEVENS. If the railroad companies do not care to give you a through rate, and a satisfactory one now exists—if they should choose not to do that, and you have no power to compel them to do it—are you not existing on sufferance?

Mr. RAYMOND. You can put it that way if you wish; but it is unreasonable from a business standpoint to say that Railroad A is not going to protect its interest against Railroad B from competitive ports.

Mr. STEVENS. Do you have through rates and routes with the Texas Pacific and with the M., K. and T.?

Mr. RAYMOND. Yes, sir.

Mr. STEVENS. And the Santa Fe road?

Mr. RAYMOND. Yes, sir.

Mr. KENNEDY. If any one of those roads should quit you, and do its business exclusively with the other line, of course you would be forced to withdraw your traffic from them and give it to some one else?

Mr. RAYMOND. And give it to some one else. There is no objection in the world to anybody coming in and going on the ocean and handling business at these ports with the railroads if they want to voluntarily, and if they can give the same sort of service. But to put in the hands of the commission the power to force a connection and to force a division, irrespective of the value of the property and the service that the lines are giving, I think would be a mistake, from my viewpoint.



Mr. KENNEDY. Let us look at that proposition from the other side of the question. You named four railroads that connect down in that southern territory with which you have connections. Suppose your line and the Morgan line should sever your connections, say, with two of those railroads and refuse to make a joint rate with them and transfer all your business to the other two roads; what would they do?

Mr. RAYMOND. They would have to put on another steamship line.

Mr. KENNEDY. Is that good economy, taking the whole transportation business as one big problem?

Mr. RAYMOND. No; but that would be a case of the survival of the fittest. The Interstate Commerce Commission could not regulate that. They could not stop you and me from putting on a line of boats from New York to Savannah if we wanted to and had the money.

Mr. KENNEDY. No; but suppose there is a railroad there that ought to have the right to ship over your line: They could compel you to make a through rate with them as well as with the other two roads.

Mr. RAYMOND. I doubt whether they can do that. That is a matter, of course, that our attorneys would have to handle afterwards. But unless they can place the sailing vessel and the barge and the "tramp" unattached vessels under the act to regulate commerce, I have not any fear of our port-to-port traffic ever being under their jurisdiction. I say that because I believe in the wisdom of this committee and of Congress, and they would not do it.

#### REGULATION OF ISSUANCE OF STOCKS AND BONDS.

#### STATEMENT OF MR. ARTHUR C. GRAVES, OF NEW HAVEN, CONN.

Mr. GRAVES. Mr. Chairman and gentlemen, I shall confine myself this afternoon to addressing the committee purely on the subject of giving the Interstate Commerce Commission (as set out in the administration bill, which I hold here, known as bill No. 17536) the power to supervise the issue of capital stocks and bonds of railroad companies. One man can not compass everything, so I am going to confine myself to that. I understand that the subject has not been discussed so very fully before this committee. I want to say that I represent myself and certain stockholders and bondholders of railroad companies, the par value of whose securities is between two and three millions of dollars. And while I represent them, I will be very frank and say to the committee that I represent them more or less in a friendly and voluntary capacity. I am not under retainer. I have been led to investigate this subject because it attracted my attention some time ago when it first came into public discussion—I think in 1907. At that time Senator La Follette was in the midst of his campaign (if you want to call it such) or his agitation of the view that a large quantity of the capital stocks and bonds of the railroad corporations was water; that railroad rates depended upon the par value of the capital, and that therefore Congress must take hold of the matter and give to the Interstate Commerce Commission power to regulate it. I shall refer to that later.

I want to say, in the first place, that I believe in a reasonable regulation of the railroads. Their economic function and their relation to

society are too important for us to lose sight of that side of the matter. But, at the same time, we must distinguish between reasonable regulation and that which borders on the actual management or control of railroad affairs. The owners of private property must control and manage the affairs of that private property. The right to regulate is not necessarily the right to manage, and it is not the right to destroy.

I simply wish to premise my remarks by saying that the railroads have two functions and occupy two relations. Their business is a public business, in that it is fraught with great consequences to the public. But the property is private property. This morning something was said about the railroads being in the nature of a public highway. That statement, I apprehend, is too broad. The courts have never given any countenance at all to that theory. You may read the Supreme Court cases and you will find nothing to countenance the idea that the Federal Government can take hold of and actually manage the railroads on the ground that they are purely post-roads or that they are public highways, because, while they are public ways, the property which makes them public ways is private property. The boards of directors of the railroads are quasi trustees for the public just so far as the public interests go; otherwise, they are quasi trustees for the investors and for the stockholders. I am here this afternoon particularly to plead for the stockholders.

I now want to give a brief history, as I understand the question, of the doctrine of either physical valuation or supervision by the Federal Government of the stocks and bonds of railroads.

So far as the public is concerned, I think I may say truly—and when I make these remarks, I hope the gentlemen will understand that I mean nothing in any personal way whatever; I simply mean to state the facts—that the question came prominently before the public for the first time when the Senator from Wisconsin conceived his theory that rates were principally dependent upon capitalization; that the capitalization was largely “water;” and that, therefore, there was a very great evil which must be remedied.

Mr. ADAMSON. Physical valuation would be a much more reliable guide than regulating stocks and bonds, would it not?

Mr. GRAVES. Very much more reliable; and I am going to come to that point later. It would be very much more reliable.

Mr. ADAMSON. And it would not raise any constitutional question at all.

Mr. GRAVES. It is very much more reliable; and as I proceed I am going to show that the physical valuation, as railroad rates are now, is simply one element, and it is not an element which must be taken hold of in an administrative capacity by the Federal Government. It is an element which, if considered at all, must be considered by judicial bodies in inquiring into all the elements which make up reasonable rates. That I will come to later, unless you wish me to speak on it right now.

Mr. STEVENS. Have we not the power to have an administrative valuation made, and make it prima facie evidence for judicial inquiries for whatever it may be worth?

Mr. GRAVES. Yes; I apprehend that the Government has that power, but with this qualification—that it would be only prima facie evidence, and that it would simply change the burden of proof and throw it upon the railroads.

Mr. ADAMSON. It could only be used as an incident or element in determining what a railroad rate should be?

Mr. GRAVES. That is all; and how long will it last? It may last one year; it may last six months. The traffic of the country may change so much through the erection of new terminals, etc.—the course of commerce of the country and the valuation of the real estate simply as real estate may change so much—that a physical valuation to-day may be good, and six months hence it may be bad; or, perhaps, it may last only for two weeks. I do not know.

Mr. STEVENS. Are you not a little too broad there? It would be subject to explanation and additional proof; but that is all, is it not?

Mr. ADAMSON. It is only a circumstance; and the value of the circumstance may be changed by other circumstances.

Mr. GRAVES. Yes; that is all. I do not know whether I am too broad or not. I really think the physical value of railroad properties, when you take their relation to individual rates—because, after all, we must deal with individual rates; the idea of the federal commission taking hold of an entire schedule very rarely comes up—

Mr. STEVENS. But, you know, there are cases pending now where the railroads have raised the point that the rate is confiscatory; and to prove it they are offering the actual valuation of their properties. I know of some cases of the kind that are pending right now in the federal courts.

Mr. GRAVES. Yes; there are some cases of that kind. Suppose they do offer that evidence. The federal court has the power to appoint a master, or the Interstate Commerce Commission, if the hearing is before it, has the quasi judicial power to investigate into the physical valuation of the railroads, to see whether the return is a reasonable return on that value.

Mr. STEVENS. But, right there, let me ask this question: In the course of a proceeding of that kind, is it not convenient and economical and speedy that there should be in the hands of the Government evidence of a similar character from its standpoint, to rebut and offset the evidence of the railroad companies? It is not a matter of necessity for the public welfare that something like that should be at hand—both of them being subject to whatever explanations and amendments, etc., the courts might admit?

Mr. GRAVES. Frankly, I think not. I say that for the reason that, after all, the question of a reasonable return to a railroad company can only rightfully come up when you are treating the schedule of its rates alone, as an entirety. If you take an individual rate on individual transactions, or a certain schedule, after all the courts are coming more and more to recognize the principle that it is not the cost of the service to the carrier that should control, but it is the value of the service to the shipper or the commodity.

Mr. ADAMSON. It is possible for the Government, at reasonable cost, to ascertain approximately the physical value of a property at a particular date, is it not?

Mr. GRAVES. Do you ask me whether it is lawful?

Mr. ADAMSON. I say, that is possible; is it not?

Mr. GRAVES. It is possible, and they have that power now.

Mr. ADAMSON. It is also possible, and at reasonable cost, to learn approximately the amount of assets the road has in return for the stock it has issued, and the amount of bonds that are out, is it not?

Mr. GRAVES. Yes; and it has the power now.

Mr. ADAMSON. Why is it not proper for the Government, then, to avail itself of all that information and use it in determining what rates ought to be charged without going further and attempting physically to control the issue of stocks and bonds?

Mr. GRAVES. Exactly so, and I apprehend that you have (if I may use that slang expression) "struck the nail on the head." President Taft, in one of his speeches—it was in his speech of acceptance—said that the Interstate Commerce Commission now has the power, under proper circumstances (meaning as a quasi judicial body), to make a physical valuation of the railroads, and, if the question of a reasonable return on a schedule of rates comes up to take the physical valuation of the railroads and see whether that rate yields a reasonable return on the present value; and in determining that present value the par value of the stocks and bonds outstanding is simply one of the elements of evidence. It is not controlling. It is not the return on the par value of the stocks and bonds. It is not the return on the market value. It is simply an element of evidence. That is all it is.

Mr. KENNEDY. When railroads are originally built, they appropriate property in the name of the public. It is the public that takes the man's private property for public use. The legal title to the real estate ordinarily goes to the corporation appropriating it.

Mr. GRAVES. Yes.

Mr. KENNEDY. But it is the public that takes, as I understand, in every State in the Union.

Mr. GRAVES. The public that takes?

Mr. KENNEDY. It is the public that takes the private property, under the Constitution.

Mr. ADAMSON. Otherwise, condemnation would not be permitted.

Mr. KENNEDY. It takes private property for public use. The authority is granted by the legislatures of the States, or the Legislature of the Nation. The public, then, in that procedure, where the public takes private property, permits this trustee—representing, as you say, two sets of beneficiaries (the public and the investors), which is correct—to go forward and issue securities representing the expenditures for public use in the taking of that property and building this public road or public highway. The railroads invest millions of money; and they put out upon the public securities representing that investment, and they are sold.

Mr. GRAVES. Yes.

Mr. KENNEDY. You now propose to make a physical valuation of the railroad and fix rates upon that basis. Is that fair to the investor who has innocently bought its stocks?

Mr. GRAVES. Pardon me when you say "I propose." I do not propose, and I think it is a mistake to think that even the railroads are proposing in any very great number of cases to defend the reasonableness of their rates on the basis of their physical value. They have done that in two or three cases. As I understand, Mr. Congressman Stevens has referred to some case of the kind, and says that he knows of cases in which the railroads have defended their rates on the ground of the physical value of the property. But that has only been done in a few cases. The railroads are fixing their rates in almost every case on the principle of what the traffic will bear.

Mr. ADAMSON. The investor that Judge Kennedy spoke of ought to put the trustee in jail for swindling.

Mr. KENNEDY. I think that is true enough; but the investor buys on the market. So far as the public is concerned, when it has acquiesced through all this period of years in the watering of railroad stocks—when the legislatures of the various States and we down here in Washington have sat silent and permitted those trustees to go on and do that in representing the public—why does not the ordinary purchaser of railroad stock stand better in equity than does the public, which has neglected to look after this matter in the past? Why is not the investor in stocks, who buys on the market, the innocent purchaser, and why is not the American public the neglectful one that should stand the loss, if there be any, as a mere proposition of equity?

Mr. GRAVES. I understand what you mean; but I am not prepared to say, considering the nature of the railroad, and the relations which it holds to the public, that the relation of the public is so close that it must stand any share of the blame for stock watering, if such there has been, and that the loss must be thrown on the public. After all, my study has led me to firmly believe that in the case of almost all classes of public-service corporations, and certainly in the case of the railroads, the loss in overcapitalization falls upon the investor.

Mr. RICHARDSON. Has overcapitalization any relation whatsoever to making rates?

Mr. GRAVES. I do not think it has any.

Mr. RICHARDSON. None in the world?

Mr. GRAVES. I do not think it has any. Chairman Knapp testified before the Industrial Commission, as far back as 1889, in substance as follows.

Mr. RICHARDSON. Is that on the subject of overcapitalization?

Mr. GRAVES. Yes.

Mr. RICHARDSON. I should like to hear it.

Mr. GRAVES. As long ago as 1889, before the Industrial Commission appointed by Congress to investigate this matter of railroad rates, he testified as follows.

In reply to a question, Mr Knapp said:

I have not seen any instances in which rates have seemed much to depend or be influenced by the capitalization of the road.

Q. Have you never seen such a case?

Mr. KNAPP. I have not. The capitalization of the railroad, I think, cuts no figure in this rate question.

Mr. KENNEDY. He was testifying about how rates were made.

Mr. GRAVES. Exactly.

Mr. KENNEDY. He was not testifying as to how they ought to be made.

Mr. GRAVES. Exactly; and if I take up the matter just where you left it and discuss the question as to how rates ought to be made, that involves the judicial principle which the courts have laid down governing the reasonableness of rates, and I will outline it as follows:

The common law early laid down the principle that where a person invested his money in property devoted to a public use, and it was in the nature of a monopoly, he was entitled to make such charges or rates as would yield a reasonable return on the property invested in that business. From that arose the idea that, assuming the capitalization to be the correct measure of the value of the property engaged in that service, then his return should be a reasonable return upon the capitalization. However, the Supreme Court of the United States

time and time again has said that even in those cases the principal element is not the capitalization, but is always the physical value of the property; and the capitalization is merely——

Mr. KENNEDY. You say the Supreme Court has held that?

Mr. GRAVES. Yes.

Mr. KENNEDY. In what case?

Mr. GRAVES. One of the principal cases in which it held that was the case of *Smyth v. Ames*, where it said:

We hold that the basis of all reasonable calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value——

Here are some of the elements which the court says are matters to be considered in order to ascertain that value: \*

And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stocks——

There the court specifies not only the par value, but the market value——

Mr. KENNEDY. They are stating all the things that should be considered?

Mr. GRAVES. They are stating all the elements [reading]:

The amount and market value of its bonds and stocks, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by the statute, the sum required to meet operating expense——all are matters for consideration, and to be given such weight as may be just and right in each case.

Mr. KENNEDY. They are passing upon a matter that is a legislative matter.

Mr. GRAVES. No.

Mr. KENNEDY. The courts have always held that the making of a rate is a legislative act.

Mr. GRAVES. No; they are passing on the principles which should guide a judicial body in determining——

Mr. KENNEDY. Which should guide the Interstate Commerce Commission under the law as it stood.

Mr. GRAVES. Exactly; exactly. They are laying down the principles which should guide the Interstate Commerce Commission in determining the reasonableness of rates.

Mr. KENNEDY. Under the law as we directed them to go forward?

Mr. GRAVES. Yes.

Mr. KENNEDY. You have confused that with the idea of the correct way a legislature should make rates if we were making rates upon a theoretical and scientific basis for the railroads.

Mr. GRAVES. I have not meant to do so; and the distinction is very clear in my mind. In fact, I want to say that the legislature——

Mr. KENNEDY. We gave a letter of instructions to the Interstate Commerce Commission. The courts are now considering whether they are acting in accordance with that letter of instructions. In that bill we provided that in fixing rates, to help them to fix a proper rate, they might take into consideration the physical valuation of the railroads. That is a legislative matter. That authority we, as the legislature, gave them under our letter of instructions to them. But

now, in the final analysis, that decision can not have any effect as determining how the rates ought to be fixed when we are considering it as a committee of the legislature.

Mr. GRAVES. I will come to that; but I can only say, in direct reply to your question, that there is no body representing the Congress of the United States which has absolute power to fix as an entirety the railroad rates of this country. The railroads still have in their hands the initiative. I will admit that the Interstate Commerce Commission would like to have that power.

Mr. RICHARDSON. Are you not mistaken about the initiative?

Mr. GRAVES. The Interstate Commerce Commission thus far has this power, and this alone: It may determine what is a reasonable rate, after having found that the existing rate is unreasonable.

Mr. RICHARDSON. Are you not mistaken about that? In my opinion, the administration bill that you are talking about—the Townsend bill—gives the power to the Interstate Commerce Commission to initiate the rate.

Mr. GRAVES. They have the power to initiate rate.

Mr. RICHARDSON. They have that power right now, right under this bill.

Mr. GRAVES. But, as I understand it, they first step in and say that such rates are unreasonable, and that these rates are, instead, reasonable.

Mr. RICHARDSON. No, no. You do not state it correctly. The bill says that where the railroad proposes, and now has the authority to make a rate after giving thirty days' notice, the Interstate Commerce Commission can come in before that rate goes into effect and shall have the power to review it and say that it shall be initiated in that way. That is what this bill gives them the power to do.

Mr. GRAVES. Exactly.

Mr. RICHARDSON. Therefore the bill practically and in effect takes from the railroad the power to initiate any rate. It says "it shall not be initiated."

Mr. GRAVES. I agree with you. The administration bill, if carried to its logical extreme, will for the first time in the history of the country vest the entire rate-making power in the Federal Government. It will do that for the first time in one hundred and twenty years. I will frankly say that I do not like the bill; but I am not here to discuss that feature.

Mr. RICHARDSON. You do not like the administration bill?

Mr. GRAVES. No; I think it is very dangerous.

Mr. KENNEDY. The Supreme Court has held repeatedly that it makes no difference whether a rate is made by a railroad corporation, by the legislature of the State, or by the National Congress; that the making of a rate is a legislative act.

Mr. GRAVES. Exactly; it is.

Mr. KENNEDY. The railroad company has no right to make a rate at all, except upon the theory that we failed in our duty to do it.

Mr. GRAVES. Oh, pardon me. I disagree with you there.

Mr. KENNEDY. And when they do it, they do it by implication. They are doing a legislative act when they make a rate over their own road.

Mr. GRAVES. I should disagree with you there, in this particular: A railroad has a right to make rates, because the charter of the State

which gave it the permission to engage in interstate commerce—a right which it possesses inherently as a citizen of a country, and a right which it did not get under the Constitution or from the Federal Government—gave it the right to make its own charges. The railroads have that right under the natural law; but not as legislative bodies, and not because the Federal Government has failed to exercise it.

Mr. KENNEDY. But as that charter has been interrupted, the supreme court of Pennsylvania has held that the property that the corporation had in the road, the property that it got for its money (the money paid for stocks and in building the road) was not any private property in the road itself, but a contract with the public that it should take a toll forever, which should be a reasonable toll; that the fixing of that toll was a legislative act; and that the railroad had a right to fix the rate, because the legislature had not done so.

Mr. GRAVES. Yes; and the legislature has given it to the railroad company.

Mr. KENNEDY. It has given it the right to take a reasonable toll. That is in its contract.

Mr. GRAVES. Yes; that is in its contract.

Mr. KENNEDY. That is an implied condition in its contract.

Mr. GRAVES. That is an implied condition in its contract. It is a right which moves from the creative body to the creature. The creative body is the state legislature which gave the charter to the corporation. The creative body is not Congress.

Mr. KENNEDY. There you are wrong again. Under the Dartmouth College case, when the charter is made, the two contracting parties are not the corporation and the legislature of the State, nor the corporation and the State. The corporation is one party and the other party is the public, whom the State represented as a mere agent to make that charter for the public.

Mr. GRAVES. Exactly; I fully agree with you there.

Mr. KENNEDY. We represent that same public as much as any State does. We are one of the public's agents.

Mr. GRAVES. No; I disagree with you there.

Mr. KENNEDY. And the question before us now is clearly within our letter of authority to act for the public.

Mr. GRAVES. I disagree with you, if I may frankly say so, in this particular: The railroads of the country, with very few exceptions, obtained their charters from the individual States. Their right to charge a reasonable toll is the right which came under their charters from the individual States. Their right to condemn property under eminent domain came from the States. Their right to engage in interstate commerce is a right inherent in every citizen, and has no relation whatever to the Federal Government.

Mr. KENNEDY. Let me correct you there. The power of eminent domain inheres not in a government, but in civil society itself, according to Blackstone and the old law writers on the subject.

Mr. GRAVES. Exactly.

Mr. KENNEDY. When you get the power of eminent domain from a State you get it because the people have authorized that State as their agent to act for them in giving you the power of eminent domain. The power to take the land does not come from the State.



The State never had it, except as it had authority from the public to act as the public's agent in giving it.

Mr. GRAVES. The power to take the land came from the State, as the agent of the people of that State.

Mr. KENNEDY. Not of that State alone, but of all the people.

Mr. GRAVES. Well, of all the people; but it did not come from the Federal Congress as representing the people.

Mr. KENNEDY. Oh, no. Congress did not have the right of eminent domain of this country any more than the State did. It had authority, I think, to grant you the right to take it if you are a railroad corporation.

Mr. GRAVES. I think I agree with you, in the main, on all of your points. The only thing that I wanted to lay emphasis upon, if I understood you correctly, was that I apprehended that the power of Congress over the rate making of the railroads is not quite so broad as the power of a State over the charges of a purely common carrier within its limits, not carrying interstate commerce, when that State has created the corporation. In the latter case the State is the creator of the creature, while the Congress is in no sense the creator of our railroad corporations; and our railroad corporations owe no prerogative to Congress. Mr. Chief Justice Marshall said, as early as the case of *Gibbons v. Ogden*, that the right to engage in interstate commerce is a right derived from the law of the land and one that is inherent in every citizen. He did not use exactly those words; but he did say that the Constitution did not create the right to engage in interstate commerce; it found it as an existing right, and simply gave the right to Congress to regulate it with respect to interstate business.

I want to speak for a moment about the necessity of this act. Is there any necessity for it from the point of view of overcapitalization? The control of capitalization by the Federal Government to remedy an evil ought to rest upon a necessity. We ought not to pass experimental legislation simply because we have a theory that it might do good. There ought to be a necessity. I respectfully submit that the necessity for such an act has long since passed by. The railroads are not now overcapitalized. Judging by their capitalization, the par value of their stocks and bonds outstanding per mile of road, the American railroads are not overcapitalized. They are not overcapitalized judging by their gross earnings, and the proportion of their gross earnings to the capital outstanding; nor in reference to the tonnage and their traffic density, which is the tonnage per mile, in reference to the capitalization. The American railroad is the most reasonably capitalized railway system of the world, save only those of Norway, Denmark, Sweden, and South Australia.

Mr. KENNEDY. To say that they are making earnings enough to pay dividends on their stock is rather begging the question. That, I think, is true. They are earning and will earn money enough to pay dividends on their stock. But if they had never had any water drawn in the stock, and had been restricted to a rate that would pay a fair dividend on the actual money they put into the construction of their roads, rates would be a great deal cheaper in this country than they are.

Mr. GRAVES. No, I beg your pardon; that is a fallacy. The railroad rates in this country have never had any relation to capitalization.

Mr. KENNEDY. I know they never have had, but in my judgment they ought to have had. I think that if the public interests had been properly looked after by the different legislatures of the States and the National Government our railroads would all be carrying freight a great deal cheaper than they are. I take this view of a public highway—

Mr. GRAVES. The English roads have governed their freight rates largely on the theory of charging a rate which would be a reasonable return on the fair value of the property—not the capitalization, but the fair value of the property. And what is the result? The English railroad rates are very much higher than the American railroad rates.

Mr. KENNEDY. That is all explained—

Mr. GRAVES. The American railroad rates are the cheapest railroad rates anywhere in the world. Of course, there are these differences: They have a long haul.

Mr. KENNEDY. But look here: If you have known of great big blocks of pure water being put into railroad stocks, why has that been done?

Mr. GRAVES. I have not known of it in recent years.

Mr. KENNEDY. There were 29,000,000 of water in the case of the Alton road.

Mr. GRAVES. The Chicago and Alton?

Mr. KENNEDY. Yes.

Mr. GRAVES. The evil of the Chicago and Alton was not overcapitalization.

Mr. KENNEDY. But they put in 29,000,000 of water.

Mr. GRAVES. Pardon me—no.

Mr. KENNEDY. Somebody must pay dividends on that, and those dividends must come from rates.

Mr. GRAVES. Mr. Commissioner Clements made that statement in New York. I wrote him a letter and disputed his statement, and asked him if he could submit any sheet or schedule of rates filed with the Interstate Commerce Commission showing that there was any change on the Chicago and Alton after he made that statement.

Mr. KENNEDY. But does not that prove that the Chicago and Alton rates were too high to be simply remunerative when they accumulated this \$29,000,000 to give to their stockholders?

Mr. GRAVES. No, no; because the Chicago and Alton rates had no relation whatever to the capitalization. They were built purely on the theory of charging what the traffic will bear. And experience shows that if you build railroad rates on the theory of what the traffic will bear you will have lower rates than under any other theory. The commerce of the United States will begin to flag, and it may be said that you will sound the death knell of the commercial supremacy of the United States, so far as our internal commerce is concerned, the moment there is given to the Interstate Commerce Commission the right to absolutely fix or take the initiative in fixing railroad rates on the theory of charging a reasonable return on the real value of the property.

Mr. KENNEDY. Then you are wedded to the idea that as the country grows up the railroads ought to put more water into their stock, and practically absorb all the increase in value of the whole country?

Mr. GRAVES. I am not; I am not. I am absolutely convinced that in the long run the control of American railroad capitalization by the

Interstate Commerce Commission means one of two things: Either (1) the languishing of the transportation industry of the country, or (2) overcapitalization. Why? There is no experience which teaches us that a government can construct or invest money in great public works cheaper than the individual who is doing it under the incentive of return on the investment. On the contrary, the extravagance of governments is far more dangerous than the extravagance of the private individual.

Again, the crucial point of the American railroad system is this: The American railroads were confronted very early in their history by rapidly declining transportation rates, partly because of competition, but mostly because railroad rates were charged on the theory of what the traffic will bear; and they constantly lowered their rates in order to get greater traffic, knowing that the less you charge your shipper the more your shipper will give you of goods to be transported. Again, under the incentive of securing a return on the property, which had nothing to do with the rates, the railroads endeavored to lower their cost of transportation. The result was that little by little economies were introduced which the railroads learned by experience greatly lessened their operating expenses and made possible larger net earnings. This, in turn, reduced transportation rates. At the same time it was very evident that transportation rates, when charged under the theory we have been following in America, could not yield a reasonable return on the par value of the stocks and bonds if the railroad was capitalized on the theory of the foreign railroad. And what is that?

There is a demarcation (not a very plain one) which depends largely upon the personal element as to when an improvement should be charged to earnings and when it should be charged to new capital. Anything in the way of new construction and extraordinary betterments and additions for the increasing of your transportation plant really means entirely new property and may be charged to capital, whereas a mere change in order to keep your railroad property up to the proper physical condition, or the physical standard with which you started at the beginning of the year, should go to maintenance charges.

Early in its history the American railroad management adopted the idea of making out of its earnings excessive charges to the maintenance account for the purpose of building up the property. This, of course, led to what is really undercapitalization, because the average American railroad for the last twenty years has been spending on additions to its property and betterments and improvements far more than it has issued in stocks and bonds. This cry of "overcapitalization" is largely the cry of the uninformed man on the street who does not understand the subject.

The English railroads are capitalized five and a half times as highly as the American railroads. The capitalization of the American railroads at this time is about \$67,000 per mile. The capitalization per mile of road of the English railroads was, in 1905 (and it has not varied much in the last three or four years), \$273,438 per mile. The German roads are capitalized at about \$102,000 per mile. The French roads are capitalized at \$133,000 per mile. I could go on in that way throughout the list of all the railroads in the world. And I will remark here that the astounding thing about this is that you

would expect the railroads of America to be, in one point, more heavily capitalized. Why? Because the American railroad laborer is paid higher wages than any other laborer in the world. One of the reasons why the English and the French and the German railroads are so much more heavily capitalized than ours is because of the strict observance of the theory that every addition to your property which is not in the nature of a maintenance charge should be charged to new capital, and against it you must issue stocks and bonds. The result is that the capitalization of those roads is growing up just as fast as they add to the value of the property. American railroads are also issuing stocks and bonds; but they issue them at a very much less rapid pace than the increase in the value of the property. That is the reason why it is that since the early days of the buccaneers in railroad transportation (I refer to the days of Jay Gould) the American railroads, after seventy-five years of existence, notwithstanding the storm and stress through which they have passed and the awful abuses that have occurred (and there have been very serious ones), emerge as the finest transportation system in the world.

Mr. KENNEDY. Have you something there in the nature of a brief, or would you care to prepare something and file it? We shall have to adjourn now.

Mr. GRAVES. I will prepare something; yes, sir.

(Mr. Graves was thereupon given permission to file a brief of his further remarks.)

Mr. GRAVES. I should like to close with just one remark, and that is this:

I respectfully submit, gentlemen, that the burden of proof lies upon the Interstate Commerce Commission, or upon the administration, to prove that this bill is actually necessary or wise in the face of these facts: The American railroad system is the most lightly capitalized system of the world; the American railroad system charges the lowest freight rates of any system in the world; the American railroad system pays higher wages to its laborers than any other railroad system in the world; and the American railroad system is in finer physical condition than any other railroad system in the world. Those seem like pretty broad statements, but, in general, they are true.

Thank you.

(The committee thereupon adjourned until to-morrow, Thursday, February 17, 1910, at 10 o'clock a. m.)

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entire line of a road or system having an established route between the same termini. We therefore recommend that lines 24 and 25 on page 18, and the first 7 lines on page 19, be stricken out and the following inserted in lieu thereof: "And in establishing any such through route the commission shall embrace therein all of a carrier's line between the termini or so much thereof as in its opinion may be required by public necessity or convenience."

#### ROUTING OF TRAFFIC.

The right of the shipper to route traffic, as conferred by this bill, appears to be confined to a selection between routes over which joint rates have been established. If this is the meaning of the provision it would not apply in cases of through routes where the rates are locals or proportionals, particularly if the initial carrier is not a party to the tariff of connecting lines. If it is intended to give the shipper the right to choose between two or more routes, in whatever form the applicable rates are published, that intention should be plainly expressed.

We therefore recommend that the words "there are" be inserted after the word "shipment," in line 12, page 19, and that lines 13, 14, 15, except the word "the" at the end of line 15, be stricken out. Also that the word "said," at the end of line 3, page 20, and the words "bill of lading," in line 4, be stricken out and the words "such routing instructions" inserted in lieu thereof.

#### PURCHASE BY ONE ROAD OF ANOTHER ROAD.

We see no reason why the prohibition that one road shall not acquire any interest in a competing road should not be extended so as to prohibit the acquiring of any interest in a competing water line. We therefore recommend that the word "the," in line 21, page 25, be stricken out and the word "any" inserted in lieu thereof, and that the words "of any railroad corporation," in the same line, be stricken out and the words "or water line" inserted in lieu thereof; and that the word "of" be inserted after the word "stock," in line 20 of the same page.

We also recommend that all of line 1, page 29, after the word "States," and all of lines 2 and 3 be stricken out, because their retention would apparently limit or modify the prohibition in the first paragraph of section 12, page 25.

We also call attention to the fact that this prohibition is directed only against a railroad corporation subject to the act, and therefore does not prevent or effect the control of competing lines by a holding company.

#### SPECIAL REPORTS.

In order that there may be no doubt of the right of the commission to require special reports under laws which do not confer express authority to investigate, we recommend that the words "or which it is required to enforce" be inserted, in line 10, page 25, after the word "informed."

# HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

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PART XX

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WASHINGTON

GOVERNMENT PRINTING OFFICE

1910

**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES.**

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## BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES,  
*Washington, D. C., Friday, February 18, 1910.*

The committee met this day at 10 o'clock a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. Judge Knapp, we are prepared to hear you. But before that, Mr. Stenographer, you may insert in the record a letter from Mr. M. A. Low, general attorney of the Rock Island lines, as follows:

ROCK ISLAND LINES,  
LAW DEPARTMENT,  
*Topeka, Kans., February 10, 1910.*

DEAR SIR: I have read with interest the report of the hearings before your committee, with respect, among other things, to the provisions in pending bills giving a shipper the right to route his freight, requiring the carrier to quote rates, not only on its own line but upon the lines of connecting carriers, and making it responsible for damages occasioned by erroneous quotations, and providing for the through movement of freight cars beyond the line of the initial carrier.

The witnesses seem to have testified on the theory that the action of carriers, in accepting or declining freight offered for shipment to points beyond their line, is voluntary. Under existing laws, through routes, through rates, and the division thereof among the several carriers, may be fixed by the Interstate Commerce Commission, and if the pending amendment with respect to the routing of cars is adopted, the through route may be fixed by the shipper. Under existing laws, the shipper may tender freight to a carrier consigned to a point beyond its line and require it to issue a through bill of lading, the effect of which makes the initial carrier liable for all damages received by the freight, except that occasioned by an act of God or the common enemy, either on its own line or the line of the connecting carrier. Furthermore, the initial carrier is, at his peril, in the absence of expressed direction by the shipper, required to send the freight by the route carrying the lowest rate. The shippers seem to base their contention that they ought to be permitted to route their freight, on the ground that they pay for the transportation, and therefore ought to be permitted to say over what lines it shall move, and that this privilege is valuable in that it affords them an opportunity to reward their friends and punish their enemies, and that it may assist them in forcing railroads to purchase their commodities. There might be something in this contention if the parties stood on an equal footing. The shipper may or may not, as he pleases, give his freight to a particular carrier, and when he has delivered it to a carrier for shipment and paid, or agreed to pay, the freight, the carrier is bound to transport the freight with reasonable dispatch, being liable for the default of all connecting carriers. It does not seem fair to permit a carrier which is forced to enter into a contract to transport freight beyond its lines, and to become responsible for damages occasioned on connecting lines, to choose the agencies which will, in its opinion, best perform the contract which has been forced upon it. The shipper must pay the freight, but the carrier may not be able to fix the amount. If the rate quoted covering its line and connecting lines is too high, it subjects the carrier to an obligation to refund; if through a mistake of its own agents, or the agents of a connecting carrier, too low a rate is quoted, if pending amendments become a law, the initial carrier must, at least in the first instance, stand for the damage.



a question of fact have applied a wrong principle of law, and I think this procedure is essential to the proper protection of the rights of the shipper. Not that I have any want of regard for the decisions of the Interstate Commerce Commission, but, in my judgment, the shipper should be on the same basis as the carrier in the protection of his rights under the laws of the land.

I go a little further than this, and in my view the shipper should have the right of appeal from an order of the commission declining to grant relief, but the facts found by the commission should not be reviewed by the court, but jurisdiction should exist in the court to review the conclusion of the commission upon the facts found.

I trust you will pardon my troubling you so frequently about this matter, but I consider it of very great importance, and I hope very much that some provision may be put into the act along the lines I suggest.

Believe me, very truly,

WM. A. GLASGOW, Jr.

Also a letter from Griggs, Baldwin & Baldwin, of 27 Pine street, New York, in reference to the matter of sample cases and baggage. (Following is the letter referred to:)

NEW YORK, February 16, 1910.

HON. JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

DEAR SIR: Supplementing the oral presentation of our contention in favor of the passage of bill H. R. 1491, on which a hearing was had before your committee on February 14, 1910, we deemed it desirable to ask your consideration of this communication as part of our contention rather than to attempt to take up more of the time of your committee with a continuance of the oral argument. This favor we trust you may be able to accord us, especially in view of the fact that after the various railroad companies represented had concluded their testimony before the committee, your members were obliged to return to the floor of the House.

The agitation to secure legislation legalizing the carriage of commercial samples as baggage, as far as the association represented by us is concerned, began in July, 1906, when a committee, known as "the excess-baggage committee," was appointed by the president of the National Wholesale Dry Goods Association. It consisted of W. H. Sigler, of Root & McBride Company, of Cleveland, Ohio; Howard Durham, of Marshall Field & Co., of Chicago, Ill.; and Robert Geddes, of Havens & Geddes Company, of Indianapolis, Ind. The immediate necessity for the appointment of the committee were the continuous complaints that overcharges were being exacted by the various railroads of the country for the transportation of baggage in excess of the weight of 150 pounds and the existence of inequitable legal conditions governing commercial baggage.

In January, 1907, at the annual meeting of the National Wholesale Dry Goods Association, the excess baggage committee submitted its report. This report dealt mainly with the rates charged for excess baggage by the railroad companies, and the information contained in the report, as well as the references given by Mr. W. H. Sigler, a member of that committee, resulted in the appointment of a new committee of five members with direction to secure, as far as possible, the correction of existing overcharges in baggage tariffs and of the unsatisfactory legal status of commercial samples as baggage.

The committee appointed at that time consisted of Robert Geddes, chairman; Howard Durham; F. S. Munger, of Edson-Moore Company, of Detroit, Mich.; W. H. Sigler; A. C. Farley, of Farley, Harvey & Co., of Boston, Mass.; and Frank T. Day, of Havens & Geddes Company, of Indianapolis, Ind. At the end of the year 1907 this committee reported that, aside from the State of Indiana, where the rates on excess baggage had been materially reduced by law and commercial baggage given a sound legal standing, the average cost of the transportation of excess baggage had been increased by the railroad companies to the extent of 20 to 25 per cent over preexisting rates.

As a result of this report the bill now before your body as H. R. 1491 was drafted and has been introduced under various bill numbers in the last two Congresses. The first opportunity for the consideration of its provisions was afforded at the hearing on February 14.

In addition to the National Wholesale Dry Goods Association, the bill has the support of the following organizations:

National Shoe Wholesalers' Association.  
New England Shoe Wholesalers' Association.  
New England Shoe and Leather Association.

Middle States Shoe Wholesalers' Association.  
Southern Shoe Wholesalers' Association.  
Western Association of Shoe Wholesalers.  
National Hardware Association of the United States.  
Wholesale Saddlery Association of the United States.  
The Trades League of Philadelphia.  
The United Commercial Travelers of America.  
The Travelers' Protective Association.

Of the foregoing associations, the members of the National Wholesale Dry Goods Association alone pay annually excess-baggage charges aggregating over \$1,500,000. Mr. Campbell, who represented before your committee the National Shoe Wholesalers' Association, stated that 20 per cent of the total expenses of commercial travelers in the employ of shoe houses consists of excess-baggage charges, 30 per cent being railroad fares and 50 per cent hotel bills, etc. From a practical standpoint, therefore, the proper settlement of the law on the subject of sample baggage is eminently desirable.

Moreover, the acceptance on the part of the railroad companies of the commercial traveler's baggage has created a condition of such far-reaching consequences that legal recognition should be made of the carriage by the railroads of salesmen's samples as baggage and the practice given legal stability.

A vast amount of the wholesale business of the country is transacted through commercial travelers. The requirements of their occupation render necessary that the samples and catalogues which they exhibit to their customers for the purpose of securing orders should be carried with them. In order to secure the transportation of the sample trunks along with the salesman, resort has been heretofore had either to artifice or the salesman has been dependent upon the favor of the railroad company or its employees. This condition is the result of the legal determination that the term "baggage" for which passenger carriers are responsible does not include articles of merchandise not intended for personal use. This definition will be found applied in the case which was cited at the hearing before the committee, *Humphreys v. Perry* (148 U. S., 627), where you will find a reference to many of the decided cases on the same point, at pages 642 et seq., of the opinion of the court written by Mr. Justice Blatchford.

The extent to which the definition of baggage is applied may be seen from the case of *Alling v. Boston and Albany Railroad Co.* (126 Mass., 121), cited in the opinion of Mr. Justice Blatchford, at page 642, where it was held that if a passenger delivered to a railroad company a trunk containing samples of merchandise belonging to a third person, whose agent he was, to be transported to a place to which the agent had a ticket, the only contract entered into was for the transportation of the personal baggage of the agent, and the company was not liable in contract to the owner of the trunk for its loss, nor in tort, except for gross negligence; and that evidence that a large part of the company's business consisted in the transportation of passengers with trunks like the one lost containing merchandise; that such trunks were known as sample trunks, and were of special construction; and that such travelers purchased tickets for the ordinary passenger trains and received checks for their trunks and were transported for the price of the tickets, was immaterial.

The consequences of the present condition of the law of which we most particularly complain are these:

1. Whenever sample trunks checked as baggage are lost the railroad company may defend against a recovery on the ground that it is not responsible for anything except personal baggage.

2. The railroad company may at any time refuse to receive sample trunks as baggage and require that they and their contents be sent by freight.

3. The commercial traveler and his employer have no legal standing before the Interstate Commerce Commission to complain of improper charges for excess baggage when such baggage consists of articles that in the present condition of the law are not legally baggage.

The first of these results is evident from the adjudicated cases to which we have already made reference.

The second condition of which we complain is not denied by the railroad companies. Every one of the witnesses called by the railroad companies when interrogated by members of your body stated that the carriage by the railroads of samples as baggage was entirely voluntary, and that, although they accepted for carriage all sample trunks that were offered, yet they desired to retain their right to refuse at any time to carry such trunks in that fashion and to contest in the event of loss the right of the salesman or his employer to recover for the samples damaged or destroyed.

The third result to which we have referred is remediable only by legislation of the character we are advocating. The Interstate Commerce Commission certainly, in

our judgment, can not impose upon railroad companies other duties than those which are legally incidental to the conduct of their business, and until the common law as enunciated by the courts up to the present time has been changed by legislation of the character under discussion the definition of "baggage" as "personal effects" will deny a standing to commercial travelers and their employers before the Interstate Commerce Commission.

There is abundant cause for complaint in connection with excess-baggage charges. The present scale for excess-baggage rates was devised some twenty or more years ago. The representative of the Pennsylvania Railroad told your committee that rates are "not higher" for excess baggage than they were twenty years ago. He might have truthfully stated that they are not lower than they were at that time. As a concrete example, he stated that the rate from Washington to New York had remained at \$0.95 for twenty years. While, therefore, there has been found marked advancement in the line of improved facilities, increased capacity, enormously developed volume of traffic, and vastly enlarged express business, all having a tendency to reduce the average cost of hauling baggage, the charge for excess baggage remains practically at the old figures. We believe that there has been no change because the only parties really interested in the reduction of rates on excess baggage are the traveling salesman and his employer, who, as we have heretofore stated, are without any legal standing to apply for a reduction of such rates. As a result, although you may occupy a Pullman seat from Washington to New York for \$1.25, it will cost you at the rate of \$0.95 per 100 pounds—\$1.42½ for 150 pounds—of excess baggage that is placed in the baggage car.

No complaint was made by the railroads present at the hearing respecting their profits on the carriage of excess baggage. It was learned by the representatives of some of the companies that we were advocating a measure containing a provision fixing the rate at which such baggage should be carried, but the bill before the committee makes no mention of rates and does not call upon Congress to exercise the rate-making power. As far as the question of improper rates for excess baggage is concerned, the proposed law merely enables the commercial traveler and his employer to go before the Interstate Commerce Commission and, fortified in the legal position, make a complaint respecting exorbitant or discriminatory baggage rates of which the commission may take cognizance.

The objections of the opponents of the proposed bill were based upon hypotheses of the most extreme character.

In the first place, it was feared by all of the railroad baggage men that the employers of commercial travelers would, upon the passage of the law, make delivery of articles sold by them, as excess baggage at enormously higher rates for its transportation, instead of by express at lower rates and with better handling or by freight at ordinary freight rates. The mere statement of such a proposition is its own refutation.

In the second place, it was feared that commercial travelers would begin to expand the amount of samples carried by them to such an extent that they would fill up the baggage cars to the exclusion of tourists' trunks containing personal effects. Such a supposition is ridiculous. The employer of the traveling salesman does not relish the payment of excess-baggage rates, and the application of principles of ordinary common sense is sufficient to answer the statement that the traveling salesman will go about with more baggage than he actually requires, and that his employer will burden himself with the expenses of paying excess baggage on samples to encumber the railroads. It may as well be supposed that every one leaving the city of New York for Chicago to-morrow will insist upon riding on the Twentieth Century Limited, as an argument against the continuance of the service afforded by that train.

The representative of the Southern Railway Company presented a third objection to the enactment of this proposed law, in the shape of a claim that it was class legislation. This argument is met by the fact that every one of the railroad companies' representatives that were present stated that they had a voluntary schedule in force relating to the carriage of samples of commercial travelers as a particular class of baggage. Certainly a classification that is not only fully recognized by the railroad company, but made the basis of rules relative to the carriage of baggage, is not discriminatory if adopted by the legislature, which in that case would only enact into law the practice of the railroad companies. Moreover, the courts have latterly come to a recognition of the practice that railroad companies have made of accepting sample trunks as baggage, and the court of appeals of the State of New York, in a case cited to the committee upon the hearing in this connection, said:

"The law relating to this subject has been in a state of evolution, and certain rules have finally been laid down in this State calculated to protect the rights of both parties, in view of the fact that a vast amount of the wholesale business of the country is transacted through commercial travelers to the great profit of the railroad company

and convenience of merchants." (*Trimble v. N. Y. C. and H. R. R. Co.*, 162 N. Y., 84, at p. 87.)

The proposed law does not compel the railroad company to discriminate against the farmer and the artisan. The tools and effects of anyone else may be carried by the railroad company under any such regulations as it sees fit to adopt. The bill for whose passage we are contending does not prohibit the railroad company from carrying anything they please in any fashion they may determine for any other class of persons, nor does it compel the railroad companies to discriminate against such other classes. Its effect, as we have continuously insisted, is merely to give to commercial baggage a legal standing such as it has at the present time in England and such as it should have in view of the practice of the railroads of this country.

The attitude of the railroad companies toward this proposed legislation is entirely anomalous. They admitted before your committee that they were carrying 150 pounds of merchandise, not personal effects, for every commercial traveler free of charge. They are therefore discriminating against every other shipper of freight by transporting 150 pounds for the commercial traveler gratis. In doing so they are of course giving due recognition to a requirement of the commerce of the country. The nature of the requirement is not changed when the same recognition is made by the legislature.

As to the form of the proposed bill, it does not differ except in connection with the rate-making provision from statutes already in force in the States of Indiana and Missouri. An unreasonable application of its provisions, if enacted into law, could not, of course, be expected. The railroad companies, by the proposed act, are only required to carry baggage on trains equipped with a baggage car. If the baggage accommodations on that particular train are insufficient or the traveling salesman does not present himself in time to have his baggage checked, the law would not be violated by sending the baggage on the train following, as the representative of the New York Central stated is done at the present time.

Section 2 defines sample baggage and requires railroads to transport only what the commercial traveler uses for the transaction of his business and carries with him solely for that purpose.

The third section imposes a penalty, to which the railroad companies made no objection.

The fourth section was designed to reach those cases where the freight rate is in excess of the excess-baggage rate. In such instances the extent of the recovery is determined by the proportion that the excess-baggage rate bears to the freight rate. In other words, to furnish a concrete instance, if the excess-baggage rate between two points were \$0.40 per 100 pounds and the freight rate \$0.50, the traveler whose excess baggage is destroyed or damaged would only be entitled to recover four-fifths of the value of the goods lost or injured.

We respectfully submit that there is need for such legislation as we have advocated, and that the legislation itself is merely by way of recognition of existing railroad regulations, and we therefore respectfully urge the passage of the proposed law under consideration.

Respectfully submitted.

GRIGGS, BALDWIN & BALDWIN,  
*Attorneys for the National Wholesale Dry Goods Association.*

Also a letter addressed to Mr. Stevens from J. B. Baird, general freight agent of the Northern Pacific Railway Company, relating to tariff schedules and ratings.

(Following is the letter referred to:)

NORTHERN PACIFIC RAILWAY COMPANY,  
*St. Paul, Minn., February 10, 1910.*

HON. F. C. STEVENS,  
*Member of Congress, Washington, D. C.*

DEAR SIR: The recent issue of the Traffic World contains a report of an address made by Mr. J. C. Lincoln, president of the National Industrial Traffic League, before the House Committee on Interstate and Foreign Commerce, of which I understand you are a member, with respect to proposed amendments to the interstate-commerce law. In this address, among other things, Mr. Lincoln advocated an amendment to the law giving the shipper the right to route his freight between shipping point and destination.

During the early part of December Mr. Lincoln delivered an address before the National Association of Railway Commissioners along the same lines, apparently, as his address before the congressional committee. In that address he criticised a rule in the

tariffs of the transcontinental lines which contained this objectionable provision. I wrote Mr. Lincoln explaining why the transcontinental lines considered it necessary to provide a rule of this kind, and, for your information, I inclose you herewith copy of my letter to him, to which, up to this time, I have not even received an acknowledgment.

I have thought that possibly some of the statements contained in my letter to Mr. Lincoln might be of interest to you in dealing with this subject, and as indicating reasons why it is not practicable to literally comply with this demand.

In his address before the committee Mr. Lincoln proposes that the law be amended so as to permit shippers, in delivering property to common carriers for transportation, to avail themselves of the right to designate and direct over what connecting lines forming a part of the through route said property shall be transported. The question is, How are the shippers to know what the connecting lines are forming a part of the joint through route in such cases as we have cited to him in our letter? I might state that the tariff containing this provision which Mr. Lincoln criticised applies, with few exceptions, from all of the points in the States east of a line drawn from Duluth through St. Paul, Sioux City, Missouri River crossings to Kansas City, thence to the Gulf of Mexico to points on the Pacific coast.

It would be manifestly impossible to enumerate all through routes in a tariff applying between points in these various eastern States and points on the Pacific coast, and if such through routes were not designated in the tariff, under a rule of the Interstate Commerce Commission, without such provision as that now contained in the tariff, the shipper would have the right to suppose that the rates applied over any route which he might select if it included only lines which were parties to the tariff.

The shipments erroneously routed, and referred to in our letter to Mr. Lincoln, were forwarded over lines that were parties to the tariff, but over which there was no traffic arrangements among the carriers for the protection of the through rate, and, as explained to Mr. Lincoln, this provision in the tariff was inserted as much for the protection of the shippers as it was for the protection of the carriers.

Hoping that this may be of some service to you in considering the matter, I remain,

Yours, truly,

J. B. BAIRD,  
*General Freight Agent.*

DECEMBER 8, 1909.

J. C. LINCOLN, Esq.,

*President National Industrial Traffic League, St. Louis, Mo.*

DEAR SIR: I have read with considerable interest your address before the National Association of Railway Commissioners, particularly that portion about giving the shippers the right to route freight, and in which you quote provision now contained in the tariffs of the transcontinental lines from the Atlantic coast points to points on the Pacific coast, reading as follows:

"The rates named herein are subject to the absolute and unqualified right of the initial carrier to determine routing beyond its own line."

I attended the conference of representatives of the lines interested in these tariffs at which this rule was considered and, I believe, therefore, that I am somewhat conversant with the conditions which prompted the adoption of this rule and think I can truthfully say that the provision was not inserted with a view of taking from the shipper any right or privilege theretofore enjoyed, but, on the other hand, some such rule was considered necessary for the protection of both the carriers and the shippers. It protects the carrier from the results of misrouting on the part of the shippers over unauthorized routes, and it protects the shippers from the mistakes of the initial line in billing freight via routes over which the tariff would not apply.

The former tariffs contained a provision that the rates applied only via routes over which there was an agreed basis of divisions. Of course, such a provision is now in conflict with the rules of the Interstate Commerce Commission as to the publication of tariffs.

In constructing the new tariffs, effective January 1, 1909, under the commission's rules, a great many changes in the former practice of stating the rates had to be made, and the railway companies, as they could not insert the same provision as contained in the former tariffs, gave this subject of routing very careful consideration. The rules of the commission require that the routing must be specific in each case or omitted entirely. All of the routes between shipping points and destination could not be included in these tariffs, as it would involve an amount of labor and such a volume of detail information as to make such a plan impracticable if not impossible.

That the absence of any restricting clause as to routing would seriously embarrass the carriers is a fact beyond question. With such a clause in the tariff, if the initial line permits the wrong routing of freight they are responsible to the shippers as well as to their connections for any overcharge resulting therefrom.

There is no arrangement between the carriers which permits of the routing of freight for the Pacific coast from Poughkeepsie, N. Y., via the New York Central, care of the Pennsylvania Railroad at Jersey City, but there is a route from Poughkeepsie via the New York Central to New York, thence via steamer lines through the Gulf ports; nor any arrangement for routing from Boston via steamers to New York and thence via the New York Central Railway, but there is an authorized route from Boston via steamers to New York and thence via the steamer line through the Gulf ports; nor is there any arrangement for routing from Richmond, Va., via the Southern Railway to Memphis, Tenn., Illinois Central Railroad, St. Paul and the Northern Pacific, but there is an authorized route, we understand, from Richmond via the Southern Railway and the southern transcontinental lines.

The above cases of misrouting are some that have actually been brought to our attention and the provision in the tariff above quoted prevents the misrouting in this way by the shippers and makes the initial line responsible for the forwarding of the business via a route over which the through rates will be protected. The lines that would be parties to the unauthorized routes named above are all parties to the transcontinental tariffs.

To make a little clearer the difficulties with reference to this routing proposition, I would call your attention to the fact that traffic from Cincinnati, Ohio, for instance, can be routed via Cleveland, or Toledo, or Detroit, or Mackinaw, or via the various cross lake Michigan routes, or via the different Mississippi River crossings between St. Paul and New Orleans. Each one of these separate routes is open to one or more of the transcontinental lines to one or more of the Pacific coast points, but none of these routes are open for traffic via all the transcontinental lines to all of the Pacific coast points. The rates in these tariffs apply, therefore, from Cincinnati via the Big Four and Cleveland, via certain routes to certain Pacific coast points, and they also apply from Cincinnati via the Louisville and Nashville Railway and New Orleans or Memphis via other transcontinental lines to the same or other Pacific coast points.

Take another case for instance. The rates in these tariffs apply from Johnstown, Pa., via Baltimore, Philadelphia, or New York, in connection with steamer lines, they also apply from Johnstown via Buffalo and the various northern junction points, also via the Mississippi gateways as indicated above. The same conditions as to application of the tariff apply from practically all of the eastern points. This we believe will make it clear to you why the proposition for showing the routes in the tariff had to be discarded.

If there was any way of stating a definite provision for routing I have no doubt the transcontinental lines would be glad to adopt it, but under the rules laid down by the commission where no routes are specified it is assumed that the rates are applicable via all routes.

You have been long enough in the railway-traffic service, I think, to fully appreciate the difficulties which the transcontinental lines had to contend with. Our attention has not been called to a single complaint which has been the result of the enforcement of this rule on the part of the railway companies; as a matter of fact, we believe that the shippers are being accorded the same privilege of selecting their routes beyond the connecting line as heretofore, except in cases where the routing has been via lines with which there was no arrangement for the protection of through rates.

In view of these conditions do you not think that the plan adopted was the best one, and do you know of any cases where this rule has been used to take from the shipper the right to designate the intermediate or delivering line, except under some such conditions as I have referred to above?

It is possible that conditions might arise in the matter of car supply or in case of misuse of equipment by some particular line where the initial line would want to retain control over its own cars and prevent loading over lines that failed to observe the usual rules for the interchange of equipment and might find it necessary to that extent to embargo certain routes.

Yours, truly,

J. B. BAIRD,  
General Freight Agent.

Also a statement of Thomas Carl Spelling, attorney for the Freight-payers' League of the United States, in opposition to certain provisions of the pending bill, together with some amendments suggested by him to the commodities-clause bill of Mr. Wanger.

(Following is the statement and amendments referred to:)

STATEMENT OF THOMAS CARL SPELLING, ATTORNEY FOR FREIGHT-PAYERS' LEAGUE OF THE UNITED STATES.

OPPOSITION TO CERTAIN PROVISIONS.

Preliminarily, I call attention to the fact that in discussions before the committees thus far only the slightest attention has been given to the cost of transportation. The real freight payers of the country have not been represented here, except, as we concede, they are represented by members of the committees. They are the retail purchasers of the country upon whom are finally shifted all freight charges, and to a great extent the fares paid for passenger service. Divers issues, in some of which they have but a remote interest, are raised by pending bills, such, for instance, as routing freight, uniformity and negotiability of bills of lading, and quotation and protection of rates. On these the representatives of the carriers and of the big shippers, or rather of associations of big shippers, have been heard at length. From the hearings I find no reasons for discussing any of these side issues. They raise mere questions of relative convenience and inconvenience as between these large interests, and I am disposed to take no part in discussing them.

EFFORTS TO LEGALIZE AGREEMENTS IN RESTRAINT OF COMMERCE.

In all that has been said by the representatives of big shippers there is scarcely a word on the proposition to authorize and legalize traffic agreements, except support for it. Herein we have conclusive proof that they do not represent, and have no interest in common with, those upon whom finally rests the burden of the cost of transportation. Their other contentions, as against the carriers, whether unfounded or meritorious, I shall leave where I find them.

The most important questions before the committees, the same being embodied in various bills, spring from, hinge on, and always revert to rates for service—the cost of transportation—however obscured by forms of language. Let the railroads be conceded the unrestrained, unsupervised power to agree upon their own rates and classifications, to adhere to them and change them at will, and they will take but slight interest in other legislative proposals. Indeed, in the absence of artificial restraints and obstacles, there would be but little need for governmental interference with rates; so that the problem of rate regulation is, after all, one of controlling monopolies and monopolistic tendencies.

I will now call attention to the fact that section 7 of the Elkins-Townsend bills is a wide departure from anything to be found in any plank of any party platform. The Republican platform of 1908 declared for the further amendment of the interstate commerce act "so as to give the railroads the right to make and publish traffic agreements subject to the approval of the commission, but maintaining always the principle of competition between naturally competing lines, and avoiding the common control of such lines by any means whatsoever." The Democratic national platform of 1908 contained a declaration identical in meaning with the Republican platform and reading as follows: "We further declare that all agreements of traffic or other associations of railway agents affecting interstate rates, service, or classification shall be unlawful, unless filed with and approved by the Interstate Commerce Commission." The difference between the declarations of the platforms and the provision in the bills is clearly important and material. Approval includes the passing of judgment after full investigation and acquisition of knowledge of the whole proceeding, information as to relations and motives and of the effect of all the terms of the agreement. The power to approve implies the power to disapprove, and would confer upon the commission a power equivalent to the power now exercised by the courts in cases arising under the antitrust act. To give the commission the power to approve or disapprove would be to enact legislation supplementary to, and in aid of the antitrust act, and to give jurisdiction over restrictive contracts and the power to annul them to a tribunal additional to the federal courts. That proposition, as anyone can see, is entirely different from one giving the agreement the status of a valid, voluntary, independent, unsupervised contract, over which the commissioners are given no more control than an unofficial citizen would have with respect to any other contract.

The commissioners could get just as much information about the rates agreed upon at the meetings of traffic agents, and exercise just as much power over them under

existing laws, as they could if the whole of section 7 became a part of the law. Having, as I think, made it clear that section 7 confers no additional power upon the commission, in which view I have the support of able counsel appearing here for the carriers, I call attention to the case of *China and Japan Trading Company v. Georgia Central Railroad* (12 I. C. C. Rep., 236), and the *Tift* case (10 I. C. C. Rep., 577), holding that the power of the commission is limited to a determination of whether the rate is reasonable, unreasonable, or discriminatory, without regard to whether it was or not the result of an agreement made in violation of the antitrust act.

If anyone believes that, with the antitrust act repealed in its applicability to railroads, the people would have any protection against grinding, oppressive, and ruinous monopoly, let him reflect that the rates fixed by such competition as we now have is the only guide for determining the reasonableness or unreasonableness of railroad rates. The Supreme Court has in three cases held the antitrust act applicable to traffic agreements among carriers in interstate commerce; and no unbiased person, not already satisfied, can read the opinions of the court in the *Trans-Missouri Freight* case (166 U. S., 290), *Joint Traffic Association* case (171 U. S., 505), and the *Northern Securities* case (193 U. S., 197), without being convinced that the reasons founded on public safety and policy for applying the statute to such combinations are stronger even than the legal reasons; also that the economic reasons are here at least equally as strong as in cases of industrial restraints.

I have read the statement of Mr. E. B. Pierce, representing the Rock Island Railroad, describing how by concert and consensus of opinion the rates of competing carriers are often equalized and harmonized, and I might for argument's sake safely agree with him that such arrangements, where brought about in the manner described by him, do not violate the antitrust act. Theoretically, and according to the strict letter of judicial utterances, they might be included within the inhibition of the statute, but according to his estimate of their effect and substance they do not restrain, but rather promote, interstate commerce. If this be so, section 7 of the *Elkins-Townsend* bill is not needed, or if needed at all, goes far beyond any existing necessity. It authorizes agreements of all kinds, even of the most far-reaching character, agreements having the force and effect of municipal law, agreements made in secret which may create monopolies beyond all regulative control. We can not fully understand all that the proposition imports, or foresee what will follow its enactment, without a wider range of observation and discussion than the record of the proceedings of the committee to date discloses.

What are the present powers of, and sources of evidence available to, the commission, upon a question of the reasonableness or unreasonableness of a rate? The *Hepburn* Act merely prescribes for the guidance of the commission a rule of law, dependent for its meaning in any particular case upon the view point or opinion of a judge or commissioner. No standard or basis founded upon fact is established by the act, or exists, and notwithstanding the considerable space filled with the reports of the commission, the mind finds in none of them any firm legal ground upon which to rest. Of necessity, the discussions before and by the commission are largely speculative. The only qualification of this general proposition is referable to the few cases in which resort could be had for comparison of the rate complained of with competitive rates; that is to say, where a rate increased at a meeting of traffic managers was challenged as to its reasonableness and the commissioners could refer to prior rates established by competition.

But now let section 7 be enacted and a little time pass during which the new conditions brought about by such a radical change become crystallized, and the commission will be so completely deprived of data and sources of light previously gleaned from competitive rates that it might almost as well make no examinations whatever as the basis for its orders. The necessity for preserving competition as an auxiliary to any exercise of the power to regulate rates is so ably and convincingly shown by Circuit Judge Shiras (dissenting in the *Trans-Missouri Freight* Case, 58 Fed. Rep., 90 et seq.), that I would like to insert a lengthy extract, but desist because of a presumption that any members of the committee not already familiar with it will consult it. It is an aphorism of economics, indorsed by such authorities as Stephenson in England and Charles Francis Adams in America, that where railroad combination is possible competition is impossible.

It may be safely conceded that meetings must be held by, and agreements made between, traffic agents from time to time, and that some such agreements are violative of the spirit and letter of the antitrust act; also that the law should not be harshly or strictly enforced in such cases. Indulgence and leniency should be distinguished, however, from unrestrained license, such as is given by said provision. Notwithstanding a plausible and righteous theory that all penal laws should be either strictly enforced or repealed, it is found in practice that scarcely any penal law is so enforced.



The transportation of the country abounds in discriminations and favors to shippers never noticed by the authorities and which, perhaps, ought not to be noticed. Of the millions of rates filed annually with the commission probably half could be shown to be unreasonably high, low, or discriminative. But nothing would be gained by it in the end, even if the commission could dispose of such an enormous mass of business. In the mass are no doubt many flagrant violations of law deserving attention, but receiving none. Every city has trade associations and shippers' leagues which, while technically violating the antitrust act, really promote more than they restrain trade, and ought not to be prosecuted. Many police regulations in our cities are violated daily and hourly, prosecutions and punishments being resorted to only in flagrant cases. At any rate, less is to be feared from agreements between carriers with the stamp of illegality upon them and the condemnation of the law hanging over them than from a congressional enactment such as is here proposed. Under such broad and sweeping authority as this provision all interstate rates, whether joint or individual, would be quickly absorbed in traffic agreements with local and terminal differentials as a feature, competition would disappear, and in the absence of officers clothed with initiatory or general powers and of an appraisal of values all effective governmental regulation would disappear.

I am prepared also to fully agree with Mr. Pierce that, if there is to be any such legislation at all as that proposed, the so-called qualifications and limitations found in section 7 may as well be lopped off as cumbersome and useless. It is true, as has been stated, that the commissioners would still have preserved to them the power to pass upon the question of reasonableness, but, as before shown, that would be, under the conditions then created, little if anything other than an arbitrary and unreasoning discretion. They would be no more justified in holding a dollar rate unreasonably high on a given traffic from Kansas City to Chicago than they would a fifty-cent rate.

The proposed provision is an outright repeal of the antitrust act in so far as it applies to railroads, nothing more nor less. It may therefore be truly said that it has no place in a bill amendatory to the interstate commerce act. It is an amendment to the antitrust act, and the provision should be embodied in a separate bill before being considered. And when so treated it has far less to commend it than the Hepburn-Warner amendment to the antitrust act considered by the Judiciary Committee of both House and Senate two years ago, because that did purport to place certain supervisory powers in the hands of the Commissioner of Corporations. The proponents of that measure were heard day after day for several weeks and never succeeded in winning a single member of either committee to its support.

Some of the intolerable abuses and impositions resting to-day upon the commerce and productions of the country were established through legislative acquiescence. Thus, it long ago became the settled policy of the railroads to destroy competition by navigation on our rivers, lakes, and adjacent seas. When the original interstate commerce act was passed that policy was already deeply rooted. But the same fear of disturbing business and checking a tide of prosperity which now so powerfully influences some political leaders then prevailed, and instead of extracting by the roots that enormous wrong, Congress inserted in the provision prohibiting a preference or advantage to any particular person, company, firm, or corporation, or locality, or any particular description of traffic, the words "undue or unreasonable," now generally admitted to have been, as there used, of enormously evil import. Nevertheless the railroads abused the license thus given to the uttermost bounds. As a result, no sense of a just proportion is seen in the country's development. Commerce and manufacturing have grown to exaggerated and abnormal magnitudes in certain favored localities, while the most fertile sections, those well able to satisfy from the products of the soil sufficient to satisfy most of our real needs, have had but little more than the normal increase of population—all due to the insertion and retention in the law of these words, rendering abortive every attempt of the Interstate Commerce Commission to enforce justice to many important sections of the country. This bit of history contains an important lesson. Whether by chance or design, or by their own inadvertence, the railroads were caught in the meshes of the antitrust act is unimportant. The important fact is that they were included, notwithstanding that they have not been as firmly held as might be desired. At any rate, to the deterrent effect of the statute is due the little competition we have enjoyed and still enjoy in transportation by rail. Under the influence of popular demands for its enforcement, and because of the constant menace of prosecution, the existence of the statute has restrained excesses, and the rates, even though fixed by concerted action, have been approximately reasonable. And now that a serious attempt is being made to have all the existent traffic associations, and all that may be hereafter created, sanctified in legislation, we should take warning from the result of undue indulgence shown to the same dominating interests in this matter of water competition. There is no popular demand for this amendment.

Whatever of public sentiment exists in favor of it has been manufactured to order. It is true that a struggle has been in progress for several years on this subject, but it was a struggle between powerful financial interests needing no protection and the general interests of the nation needing the protection which the antitrust act was designed to furnish and has, to some extent, afforded. The principal, if not the only incentive for urging this amendment is the power it will give the railroads to increase rates and maintain or perpetuate high rates. The asserted inconvenience or embarrassment incident to obeying the law is entitled to scant consideration against the momentous results to flow from a compliance with their demands. There is no instance on record of any traffic manager committing suicide, or even withdrawing from public notice, by reason of having participated in a conference on rates.

The aggregate of a vast number of transactions constitutes interstate and foreign commerce in general sense. And this commerce is of general or rather universal interest. If it might be called property, then it is the common property of national citizenship, and each and every person is equally a community participant. It is immaterial, in this respect, that some great corporation largely contributes to the aggregate and that individuals contribute only occasionally and infinitesimally. All are on equal footing. The principle of equality can be more justly said to control here than in many other affairs of government.

It has been judicially declared that the right to participate in commerce is inalienable. This must be so, in a qualified sense. And if equality of right and privilege be an underlying principle of our Government, then no legislation which grants immunity to a class of persons, natural or artificial, from the established rule of freedom and equality, and enforces it against others, can be defended from any standpoint of justice.

These principles were kept constantly in mind and often referred to in the debates preceding the enactment of the antitrust act. If any change is desired, this principle of equality can only be conformed to by an outright repeal of the whole statute. The only other way to promote equality is to let the law stand as it is. Every principle of fairness and equality will be violated if any amendment be made which creates an exemption.

We are now "at the parting of the ways" on this issue, and the question is whether we shall reverse the wheels of progress in legislation, disappoint the hopes of the whole nation now centered upon the reestablishment of economic justice, and undo the wise work of Congress twenty years ago. If it be done, it will be difficult to prevent a widespread belief that it is done for the sole benefit of powerful financial interests already possessed of a taxing power greater, more firmly held, and more far-reaching than that of any government, national or state.

#### REGULATION OF CORPORATE MANAGEMENT.

Other legislative proposals are before the committees of sufficient general importance to warrant at least brief discussion by anyone fortunate enough to secure the attention of the committee. I refer especially to all those provisions, found in two or three sections, pertaining to stock and bond issues, capitalization, and acquisition by one carrier of the stocks of others. I would have it clearly understood that I consider all these features of corporate management susceptible of great abuses; and yet I agree fully with the representatives of the railroads who have spoken before the committees to the effect that further legislation by Congress is not the remedy for them. In fact, I think it would be found that Congress lacks the constitutional power to effectively deal with such abuses by legislation directly applicable to those internal affairs of corporations created by the States and governed in these respects by state laws.

Congress may regulate, that is to say, make rules for the government of, interstate commerce. In exercising this power, however much it may appear to be regulating objects and things which are merely its adjuncts and instruments, the government is never on safe, that is to say, constitutional, ground, unless the distinction between the thing to be regulated (interstate commerce) and these adjuncts and instrumentalities is kept in mind. The dealings between stockholders, and between stockholders and their corporations, do not directly relate to, nor do they directly affect, interstate commerce, any more than would the contracts between partners who, in a firm name, engage in interstate commerce. Congress has nothing whatever to do by legislation directly applicable thereto, with the division of ownership into shares nor with the disposition of the shares.

The Federal Government is no more concerned with capitalization and stock transfers of railroad corporations, per se, than with the deeds and muniments of title to real estate which it has power to condemn for its purposes. These must, indeed, be examined to ascertain the extent of interest of the parties against whom condemnation

suits are begun, and to ascertain if the title which the Government may acquire is a good title; but it does not by any means follow from the exercise of the power of eminent domain in such cases that Congress can regulate titles and transfers of real estate within the States.

At this point, this question arises in many minds: Suppose a railroad company, by purchases of stock, gets control of a competing road and acquires a monopoly of interstate commerce in a section of the country, does not the contention deny to the Government a remedy in a case like that? The answer is, that while Congress can not directly legislate concerning stock ownership and stock transfers, it can legislate for the control of interstate commerce, and control includes protection. And, of course, protection includes remedies, penal and civil. And when, as in the antitrust act, restraint and monopoly are forbidden and a case under that statute arises, the Government has unlimited power within the rules of evidence to prove its case. It can prove the means, agencies, and instrumentalities by which a monopoly has been attempted or created or restraint imposed. If an attempt has been made to violate the statute by acquisition of stock in rival companies, that can be shown, the same as if it were by the execution of leases, by restrictive contracts, or otherwise. And such transactions may be undone and set aside or enjoined by the court when necessary to give the Government the relief to which it is entitled. But that all belongs to the law of evidence and procedure and has nothing to do with substantive law such as an act making rules for interstate commerce. Of course, Congress may establish rules of evidence and procedure or may change them. It may do so in a regulating statute or in a separate statute. But, in doing so, it is exercising a power other than that conferred by the interstate-commerce clause, and which can not be so extended as to affect substantive rights.

Flowing from the doctrine that Congress can legislate to such effect there has originated a dangerous economic heresy. The Interstate Commerce Commission recognizes and, in so far as an executive bureau can, gives currency or vitality to a fallacious rule for determining reasonable rates; that is to say, the commissioners accept the dictum, not of any court, or of Congress, but of the railroads themselves and the Interstate Commerce Commission, that at all events and under all circumstances the stockholders in railroad companies are entitled to a reasonable return upon their investments. That doctrine runs through many orders made by the commission and views of commissioners, published in their reports and otherwise, and dominates the proposed legislation in some of the bills. It simply means that when the Government comes to the exercise of its power over interstate commerce, given by the Constitution unqualifiedly, it must guarantee to a certain class of investments, namely, those made by railroad stockholders, a certain and steady return, regardless of the fate of any and all other forms of investment.

It would appear sufficient for a complete refutation of the proposition merely to state it. But it has been of late so frequently promulgated by the Interstate Commerce Commission as to justify a suspicion that the commissioners entertain a design to fasten it upon the freight payers of the country as an economic principle. And if it be an unsound and dangerous heresy, the sooner it is shown to be such the better. It is totally inconsistent with the rule accepted as fundamental by the commission, as well as all intelligent men who have seriously considered the subject, that the people are entitled to reasonable rates; that is to say, such rates as would be produced by normal conditions, by which is meant competitive conditions. That rule should be observed by Congress and by governmental agencies, without regard to the effect upon the investments of individuals. One and the same illustration will show both the injustice of the rule given currency by the commissioners and the enormity of its injustice. Here are two leading cities, New York and Chicago. When railroad construction first began, a line of railway was constructed over a natural route—along the lake shores by way of Niagara Falls, Buffalo, and Albany—between them. Another line was constructed along a route almost or quite as judicious and economical by way of Pittsburg and Philadelphia. Contemporaneously, a third construction was undertaken and finally completed over an indirect route to the Ohio River, and thence across a mountainous region by way of Washington and Baltimore. The fraudulent financing of construction companies and stock bonuses to bondholders may have been a feature of all these enterprises, so we will pass that all by. But the third of these enterprises was ill-advised and unnecessary, except for local service. That is to say, for the Chicago-New York traffic and for the Chicago-Pittsburg and Chicago-Philadelphia traffic it was not needed. Nevertheless its projectors persisted, and finally by stock and bond flotations and by inflations, by enormous expansions of credit, and by leasing other roads which would otherwise have been unprofitable, succeeded in establishing a zigzag line reaching from Chicago to New York

Now the question of fixing rates over this third line comes before the commission, and it applies its rule. The question immediately arises, Why should the people pay an exorbitant rate on traffic between Chicago and New York on all these lines, on the plea that such rate is necessary to insure a net profit to the stockholders in the roundabout road, but which is so exorbitant on the other two lines that it enables them not only to pay dividends to their stockholders, but to accumulate vast surpluses to be expended in the construction of new lines and terminals?

#### AMENDMENT OF THE COMMODITIES CLAUSE.

The first Wanger bill (9284) has been superseded by H. R. 9504. I will not attempt to discuss it at length, but shall merely point out the more important defects.

The first objection involves merely a question of policy, so I will merely state it. Timber and the manufactured products thereof are exempted from the operation of the bill, following the language of the existing provision. Secondly, it is not declared to be unlawful for the carrier to transport a commodity in which it has an interest, but only where the commodity is "manufactured, mined, or produced by it, or under its authority, and owned by it." Much of the coal product entering into interstate commerce is now transported by carriers under contract to sell for the producer and retain a percentage of the proceeds in lieu of freight charges. Especially does this practice prevail in the Pennsylvania coal field. It is easily seen what complete control is thus given to the railroads. This bill would not reach such cases.

Third, while the bill makes a stagger or pretense of limiting control through stockholding interest in the producing company, it really sanctions and concedes enough to insure and perpetuate it. Even if holding one-third the stock did not insure control, it would only be necessary for one of the directors of the railroad, or holding company standing between, to get control of a little more than one sixth, to give it an actual majority. It will be noted that, by this bill, present conditions are to be tolerated and all past and future violations condoned for a period of three years from the date when the original provision took effect. The railroads have made no attempt to obey the law. Their practices have been violative of the antitrust and interstate-commerce laws from the first. (See *Chesapeake Coal Case*, 200 U. S. Rep.)

Fourthly, unless some addition were made to the bill neither the Government nor any individual would have any remedy, notwithstanding the declaration of unlawfulness. Had the point been made in the commodities cases they must have been thrown out of court for want of facts entitling the plaintiff to any relief. But the defendants felt secure upon their constitutional objections and raised no jurisdictional point. This matter is important, and I feel the necessity of presenting it at some length, and must deal with the technique of construction and procedure.

No task of construction to determine whether the penal provisions of section 10 of the interstate-commerce act would apply was involved in the commodities cases (213 U. S., 366). But the contentions of the defendants on the theory that the penal provision of section 10 was applicable, and that the commodities clause was so lacking in definiteness as to render it totally abortive, could not be satisfactorily answered. The best we could do was to evade their objections, which we successfully did.

But, as before stated (in different form), the interstate-commerce act gives the Government no civil remedy, either by mandamus, injunction, or otherwise.

First, mandamus is not available.

In the absence of a statute, federal courts have no original jurisdiction in mandamus. That is to say, the jurisdiction conferred by the judiciary act of 1789 is ancillary to and in aid of an original jurisdiction already acquired over some other matter of legislation. When a statute such as the eighth paragraph of section 20, interstate-commerce act, confers a jurisdiction it is exercised according to the rules of common law. See *U. S. v. Union Pacific Railway Company* (91 U. S., 72); also same case, (3 Dill. (U. S.), 4 Dill. (U. S.).)

It is well settled that mandamus and injunction can not be used interchangeably; that is, the functions of mandamus can not be perverted to compelling abstinence from action. (*Legg v. Mayor of Annapolis*, 42 Md., 203, and cases cited; *Crawford v. Carson*, 35 Ark., 565; *Supervisors v. United States*, 18 Wall., 77; *Ex parte Cutting*, 94 U. S., 20.)

It is true that paragraph 8, section 20, construed in its broadest sense, might be held to authorize the writ to prevent positive violations of the commodities clause. But that would lead to an absurdity which will always be avoided if possible. Now, a different construction is not only possible but necessary in order to harmonize this with other provisions of the act.

Where language is capable of a broad interpretation which would lead to inconvenience or absurdity or conflict with other provisions in the same act, and it is also

susceptible of a narrower meaning which will make it conform to settled principles or give effect to all parts of the act, such narrower meaning will be accepted in construing the statute.

Now, assuming that said paragraph 8 allows a resort to mandamus to coerce obedience to the commodities clause, let us see what it leads to. It is impossible to find any connection between said paragraph 8 and the commodities clause, except that both are found in the same scheme of legislation. Both are brought in from separate sources as amendments.

Let us ask and answer the question. What could be alleged in an application by the Attorney-General for mandamus under said eighth paragraph; and what would be the legal effect, if any, of the legislation? Facts could be alleged showing that a defendant had violated a criminal statute. In a mandamus proceeding such allegation would be wholly immaterial. What else could be alleged? It is difficult to conceive of any other facts that could be set up other than facts showing an intention to commit further violations. But in addition to the objection to the use of the remedy to coerce abstinence, the proper office of injunction, mandamus, or whatever the character of the case, the court will not assume jurisdiction to compel general obedience of the law, but only as to some threatened specific violation. (*Chesapeake Coal case*, 200 U. S., 391; *Swift & Co. v. United States* (Beef Trust case), 196 U. S., 375.) Such allegations could be reached by a general demurrer. But even if the defendants went to trial and judgment, the objections could be raised for the first time in the appellate court. Anyhow, could any competent evidence be produced in any case to prove criminal intentions of defendant as to the future?

Now, what is a reasonable construction of the parts which make up this interstate-commerce act? Since the Attorney-General can only apply for mandamus at the request of the commission, it was evidently not intended to take the enforcement of even this part of the law out of the hands of the commission, where Congress has reposed the duty; but to make these services available when, in the opinion of the commission, there was urgent necessity for an immediate resort to mandamus without waiting for the slower process of making an investigation and order as provided in section 16. If the act required by the order to be done was of a positive character, mandamus was to issue; if abstinence on the part of the defendant was required, the remedy was to be injunction. And there are many duties requiring action specified in the act upon which the remedy given in section 20 could operate, so it is not necessary to pervert it. The mandamus mentioned in section 16 is the ordinary remedy by that name in use generally in the federal courts; that is, auxiliary or ancillary to ordinary jurisdiction.

The draftman of that part knew what he was about. He knew the wide difference between the two remedies, mandamus and injunction, and he provided both, each to perform its proper function. But when we come to paragraph 8 of section 20 we see evidence of neglect; and in the Congressional Record we find other evidences of neglect. It was the express intention of certain Senators to add the remedy of injunction to said paragraph 8, in order to complete it. (See vol. 40, pt. 7, pp. 6617 and 6620, 59th Cong.) But it was never done.

Secondly, is there any other civil remedy? An examination of the authorities convinces one that a case under the commodities clause can not be brought under said paragraph 8, nor in the name of the United States at all, which will confer jurisdiction to grant an injunction.

It appeared to be the accepted doctrine prior to the *Debs* case (158 U. S.) that the Government has no standing in a federal court for equitable relief, except in a case coming within established jurisdiction. In that case it was held that to protect the public from a nuisance resulting in great public injury and inconvenience, or in case, perhaps, of any great public danger, the Government might have the preventive remedy. Jurisdiction may be conferred by statute to grant to the United States an injunction in any case, even to prevent crime, for instance criminal restraint of trade. But we seek in vain for statutory jurisdiction to grant an injunction under said paragraph 8 of section 20, interstate-commerce act. It seems clear that a violation of the commodities clause involves no such public danger or injury as would authorize the granting of an injunction, as danger and injury are defined in the *Debs* case and other cases cited above.

Thirdly, is there any authority for a mandamus or an injunction at suit of the commission under section 16? It seems to me clear that the commission exhausts its authority with reference to such purely criminal clauses of the act as the commodities clause when it follows the procedure found in the first paragraph of section 12; that is, makes investigations and takes any other proper steps to set the prosecuting officers of the Government in motion; and that it has authority to make orders and have them

enforced by civil remedies (see sec. 16) only in cases where some discretion is vested in the commission. No case of this kind could arise under the commodities clause.

As a general conclusion, I wish to say that if the Wanger bill should become a law in its present form there would exist no remedy, civil or criminal, of which any court would have jurisdiction by which to enforce the commodities clause. In other words, the Government would find itself then exactly where it is to-day.

The Cummins bill (S. 3709) seems to meet the situation, and as there is nothing in the Townsend bill on the subject, an identical bill should be introduced in the House and reported by the committee.

The evil sought to be remedied by the commodities clause is distinct from others complained of. That clause of the interstate-commerce acts should be amended so as to make it effective and enforceable.

**PUBLIC POLICY UNDERLYING COMMODITIES CLAUSE. (HAVING SPECIAL REFERENCE TO BILLS THAT HAVE BEEN INTRODUCED TO AMEND THE COMMODITIES CLAUSE.)**

An interest on the part of corporations engaged in transportation in the commodities transported by them was long ago condemned in England, as was shown in the Chesapeake Coal case (200 U. S., 361), and is no longer tolerated in that country. In both England and Germany, railroad companies may acquire property, but only such as they need in their business as common carriers. Everywhere it is realized that such a combination of interests and avocations would, if sanctioned, become an intolerable economic evil which would grow worse and worse by rapid strides; that, if permitted, it would result in the welding together of all interests sufficiently profitable to tempt the hand of greed, until little would be left for the public, and that little the least desirable; that those inside the combinations thus formed would comprise just two classes of widely divergent conditions, the one class rich beyond the wildest conceptions, and the other miserably poor, wholly dependent and subservient.

Such a rank weed of rapid growth has attained only limited stature in this country when compared to possibilities. Nevertheless, experience should warn us that it is never safe to depend on men possessing financial power to set a limit to avarice, especially if they be given legal sanction by state legislation. If the principle that the combination of the two incompatible interests, producer and carrier, is beyond the reach of any governmental authority be upheld, then whatever is possible for interstate corporation to do it is probable that they will do.

Let it not be overlooked that the evil against which the commodities clause was originally directed must be met with a rule as broad as the nation and as comprehensive as material wealth within the nation. Let it be borne in mind that ownership or interest is ownership or interest regardless of environment, regardless of circumstances of loss, inconvenience or hardship, and that no peculiar circumstances can distinguish one such case from others where the ownership or interest is found, though such circumstances be absent; also that if the railroads can transport coal which they own or in which they have an interest, they can so increase the cost of coal to the manufacturers of steel and iron products as to force a sale to them of all the steel plants and deposits of iron ores in the country, to say nothing of other such interests. They will require little or no cash for this purpose, only the power which the triumph of such a principle will give them.

Now, will resources of copper and lead escape? These, like numerous other resources essential to civilized existence, are to be found only in isolated places and limited areas; and, to be of any value, require transportation.

To complete the financial despotism to thus result, it is only necessary to contemplate a unity of control of the railroads. The disastrous and far-reaching result of the Northern Securities scheme was thwarted, but the result of what may follow a failure to further legislate on this subject may be then more fatal to public and private interests.

The circuit court in the Commodities cases pointed out the total dependence of 15,000,000 of our population upon certain anthracite combinations. Would it not be better even for that one-sixth of the population if they suffered greatly for a time from a scarcity of one kind of coal if ultimately they were freed? But Congress has not attempted here to legislate for 15,000,000, but for 90,000,000 or 100,000,000, people now under its jurisdiction, to say nothing of the hundreds of millions to succeed them.

The Commodities clause, as heretofore formulated, embodies a principle applicable to the whole national domain, not limited to coal but to an infinite variety of commodities. The contention of counsel in the Commodities cases constitutes an object lesson and a startling illustration of the tendency and result of tolerating and legalizing what the anthracite combinations have done. We are thereby impressed that the

time has come for a determined stand—for congressional action to save the people from a financial despotism over them beside which the political centralization against which warning was given by the circuit court is of small import. Of what use or benefit will be the knowledge that political sovereignty of the States has been enhanced and federal sovereignty restricted when the people within the conventional boundaries of the States have been impoverished, and have seen their natural resources extracted and sent broadcast over the world by giant monopolies bent solely upon the enrichment of a few industrial barons? These care little or nothing for present or future consequences. No matter how sad and disastrous to the race their exploitations, they and their successors will still have not only luxury, but almost limitless wealth. To the bleakness and despair that shall visit our shores in future time they need not give a thought. They will have the means to purchase not only comfort, but luxury, so long as men with hands to toil remain on the earth.

Of course there are those among the myriad productions of the country which do not require the protection of the commodities clause. There are many instances in which it will be to the advantage of the interstate railroads to merely hold mortgages on the resources and labor of the country, and exercise with respect to them the toll-taking or taxing powers which they possess. If, in such cases, they foreclosed and secured actual ownership, they would have the trouble and expense of management. And self-supporting proprietary labor, still subservient and dependent, will be better for them than if they absorbed every avocation and industry in which there is a profit. But there are many industries whose areas of productivity, like that of anthracite coal, are limited. Now, let the principle be once acquiesced in that Congress can not protect the people from the so-called "state policy," "local enterprises," or whatever it may be called, whereby a State can promote monopolies such as we have been describing, and the operations of the anthracite roads will be duplicated in every State whose state legislation can be so shaped as to give them sanction, if there happens to be a prospect that considerable profit will be realized by getting control of a particular industry.

Some lines of production are peculiar to certain States. The production of oranges and other citrus fruits is limited to the coast section of Florida and half a dozen counties in southern California. The production of certain commodities of general use, in marketable quantities, is limited to southwestern Texas, principally in the neighborhood of San Antonio. And we might mention iron, marble, the best qualities of building stone, along with others. While timber and its products are exempted under the statute as it now stands, the policy of the nation may at any time change, and ought to change with respect to that necessity of life.

#### **STATEMENT OF HON. MARTIN A. KNAPP, CHAIRMAN, INTER-STATE COMMERCE COMMISSION—Continued.**

The CHAIRMAN. Judge, we are at your service.

Mr. KNAPP. Mr. Chairman, I am at the service of the committee. Recurring to the subject which was under discussion when the committee adjourned yesterday, if I might be permitted to add a word on through routes and joint rates, bearing both upon the limitation in the present law and the limitation which would be created under the Townsend bill, assuming, as I think we may, that a road having an established line with good facilities between A and B ought not to be required to short-haul its traffic—that is, to allow a portion of its line to be united with another line and make a new route between those points, still there may be cases where that ought to be done in the public interest. Assuming, as I do, that where there is an existing route, part rail and part water, which is satisfactory, ordinarily, or in many cases, the commission ought not to establish an additional route, part rail and part water, between the same points, yet there are cases, I think, where that ought to be done. Assuming that under present conditions, there would rarely be public need of compelling through routes between steam and electric lines, where the latter was wholly or mainly engaged in passenger business, there may be cases where that ought to be done in the public interest; and in the rapid

development which is now going on in electric transportation it is altogether probable that in the near future cases will arise where joint rates and through routes should be established between steam and trolley lines as could not be done under the limitations in the present bill.

Now, why should not the commission be trusted to exercise a wise discretion in each case? Why should it not be trusted not to do injustice in any case as between conflicting interests? The commission is now given the authority to determine the reasonable rate, and to prescribe it for the future; and that determination in ordinary cases is final. It can pass upon the reasonableness of rules and regulations, and, under the Townsend bill, and under other bills upon this subject, the commission is to have power to fix the classification of an article independent of its rate; and under the Townsend bill it will have power—very great power—over the issuing of railroad securities. It will fix the value of railroads to determine what stocks and bonds shall be issued. If it is to be given discretionary authority in matters of such consequence as these, why should it not have rather broad discretionary powers in reference to the creation of additional through routes where the public interest seems to require such action?

That, in a brief word, covers about all that I care to say on that subject unless there is some specific inquiry.

The CHAIRMAN. While under these propositions the commission would be given wide latitude of discretion, in the long run, in the construction of law, isn't it almost inevitable that certain principles shall be adopted, and the broad administration of the law must follow those principles and can not make arbitrary distinctions?

Mr. KNAPP. Measurably that is true, Mr. Chairman, but not to the same extent in administrative policy as in judicial determination.

The CHAIRMAN. While you are laying down the construction of law and the administration of certain principles about railroads, and while nominally you are administrative officers, you pay as much attention to precedent as any court does?

Mr. KNAPP. I should hesitate to assent to the proposition as broadly as you have stated it, because the facts and circumstances in one case differ so materially from the facts and circumstances in other cases as to be controlling of the determination.

The CHAIRMAN. Take the case that was presented here the other day, and I am not asking you to express any opinion upon that case, because it may come before you, but there is a line of boats on the Hudson River running from New York to Albany, now exclusive, I believe, having traffic arrangements, or without traffic arrangements, but selling through tickets on railroads, and the line being used on through tickets sold by railroads. Supposing a new line should be started there, and you are given the power to make rules over lines with connecting water carriers, and you establish a principle in some other case; wouldn't it be difficult for you to arbitrarily say in this case that these people are not entitled to through rates?

Mr. KNAPP. Not if the facts materially differ, I should have no difficulty.

The CHAIRMAN. The facts can not very materially differ. Here is a new line that may be proposed; a new line may be proposed on the Pacific coast. You say there that they must give through trans-



portation. The facts are very similar, and perhaps there is hardly any variation.

Mr. KNAPP. A proposed line is one thing, and an existing water line, such as this law contemplates, is another thing.

The CHAIRMAN. When I say "proposed line," I mean proposed as to other business; it is a new line. I should think it might be a very difficult thing to make one construction in one case and another construction in another case.

Mr. KNAPP. You anticipate difficulties in that regard which have not occurred to me.

Mr. STEVENS. Judge, the water carriers in their hearing before the committee also made another very serious complaint against this and other amendments to the interstate-commerce law so far as affecting their business is concerned, and that is that the liability of water carriers for freight that has existed since the days of Justinian, and I presume before that, is abrogated by the interstate-commerce law as it now stands; that is to say, that where their liability holds, the law is limited to the value of the vessel. Under this, and the Carmack amendment, their rivalry would be unlimited, and that would eliminate them practically from competition by rail; and that is sustained by decision, I think, in the admiralty court of New York. Do you know anything about that?

Mr. KNAPP. It has not been brought to my attention.

Mr. STEVENS. Has that point been brought to your attention?

Mr. KNAPP. Not before.

Mr. STEVENS. So that you would not care to give any expression upon it?

Mr. KNAPP. For the moment it occurs to me that that is a criticism upon the Carmack amendment, and not upon the proposed modifications of the pending bill.

The CHAIRMAN. Their position was that the Carmack amendment, taken in connection with the authority to compel them to enter upon the routes at any place, increased their liability.

Mr. STEVENS. Yes, that is the point; in other words, that you assumed at first to bring all their business within the jurisdiction of your commission; that your commission substantially changed its mind by the majority of one, and only brought their business within your jurisdiction which consisted of through routes. Now you propose, and we propose, that you be given jurisdiction of practically all of their business, which would abrogate all of the old-time rights and privileges that water carriers have had. That is the point.

Mr. KNAPP. I may be quite obtuse, but I don't exactly appreciate the point. The commission has held that where a water line unites with a rail line in handling through business, that the water line is subject to the law only to the extent to which it is under common control, management, or arrangement with the railroad company.

Mr. STEVENS. That is true; but at first you held that wherever they united in the slightest particular, that that small point of union brought all of their business within the jurisdiction of your commission. But subsequently you changed that position to the position that you have just outlined; and now they complain that we intend further to extend your jurisdiction so that practically all of their business can be brought within the jurisdiction of your commission, and within the jurisdiction of the Carmack amendment; and that that

abrogates the old rule of liability that has existed for more than a thousand years.

Mr. KNAPP. If the chairman is right in his suggestion, the decision that was made becomes the settled law of the case so far as the commission is concerned. In the second place, as a practical matter the liability, it seems to me, could never exceed the limitation which you say has existed for so long a time.

Mr. RICHARDSON. In that connection, isn't it admitted by the commission that there is no demand or necessity or reason for the regulation of water rates except where connecting with common carriers?

Mr. KNAPP. I am not prepared to say that that is the view of the commission. I have no authority to speak for the commission. That is what the commission holds under the present law.

Mr. RICHARDSON. That there is no demand or necessity for the regulation—

Mr. KNAPP. We hold that the present law does not give jurisdiction over the water line excepting to the extent that it is under common control, management, or arrangement with the railroad.

Mr. RICHARDSON. Do you think that the law ought to go further and give the commission the authority to regulate the rates over water courses?

Mr. KNAPP. I am not prepared to recommend that at the present time.

Mr. RICHARDSON. In connection with steam railroads?

Mr. KNAPP. I say I am not prepared to recommend that legislation go to that extent at present.

Mr. KENNEDY. Under existing law the initial carrier is liable for the whole damage that may occur in transit.

Mr. KNAPP. So the Carmack amendment seems to say.

Mr. KENNEDY. Suppose the initial carrier be a railroad, and the part of the joint route be over a line of steamships, and the steamship carrier goes down itself. Under existing law no recovery could be had against the steamship line.

Mr. KNAPP. Well, I hesitate to express opinions at the moment upon very difficult questions of law which the commission has now no authority to determine, and which is not proposed that it shall have authority to determine under any pending bill.

Mr. STEVENS. No; but it affects the policy of the committee and Congress in determining how far the law should be amended.

Mr. ADAMSON. Under existing law and practice water lines do not become parts of through routes except on their own motion, volition, and initiative. If they become subject to your commission, it is because they voluntarily do so; is that not true?

Mr. KNAPP. Except as we may under the present law require a water line which maintains a rail line—

Mr. ADAMSON. Yes; I understand, but that is its own; unless it connects itself with some other line.

Mr. KNAPP. A physical connection; yes.

Mr. ADAMSON. And not under the same control and management if there is a physical connection?

Mr. KNAPP. No; but under the provision in the Hepburn law, so called, which permits the commission to require connecting carriers to make through routes and joint rates, the statute says that that may be done, although one of them is a water line.

Mr. RICHARDSON. That, of course, will happen.

Mr. KNAPP. If I may answer your question further, the only instance, as I said yesterday, in which that authority has been invoked has been where the water line was petitioning to have it done, and the rail line declined to make the connection.

Mr. ADAMSON. Then it was on the application of the water line?

Mr. KNAPP. Yes, sir.

Mr. STAFFORD. The proposed amendment so far as water carriers are concerned seeks to vest jurisdiction in the commission to establish through lines whether a through line exists now with a rail line or not.

Mr. KNAPP. I don't think that that is the effect, if I understand you.

Mr. STAFFORD. I understood that the proposed amendment was to confer additional jurisdiction upon the commission to establish additional through lines by water and rail, even though a through line already existed?

Mr. KNAPP. Yes. •

Mr. STAFFORD. Would that authority, if vested, confer upon the commission authority over local rates even upon a water line which was joined with the rail line in through traffic?

Mr. KNAPP. Clearly not, in my judgment.

Mr. STAFFORD. The lake carriers feared mostly the unbridled competition of some competing lines that would take away their business by establishing a cutthroat rate on local business and in conjunction with local rates on rail lines; so if it would not confer jurisdiction over the local rates on water lines, they would still be at liberty then to meet that competition that might arise from some competing water line being established.

Mr. KNAPP. If I understand you, a concrete illustration would do this: Here is a railroad line from New York to Buffalo. There is a steamboat line on the lakes to Duluth. Now the commission may require that they unite in establishing a through route and joint rates. I don't understand that that would bring the local traffic of that water line between Buffalo and Duluth under the control of the commission.

Mr. RICHARDSON. Don't you think the principal alarm that our friend just called your attention to is brought about by the fact that that proposition of the Hepburn bill was left out which says "that provided a reasonable and satisfactory through route does not exist?" Don't you think that the cause of all the alarm?

Mr. KNAPP. Apparently, from a suggestion made yesterday by a member of the committee. I had not heard of that objection before, because, as I have already twice stated, the only instance in which that authority of the commission has been invoked under the present law was where the water line was the petitioner.

Mr. RICHARDSON. I do not want to infringe upon the rule that you have laid down in regard to expressions of opinion about the law, but you do not believe that the commission ought to have the right to initiate rates, do you?

Mr. KNAPP. Not under present conditions.

Mr. RICHARDSON. Under present conditions. Well, don't you think that the provision that you advocate of extending the limit prescribed, or suggested by the President of the United States in his message, of allowing the commission not to go beyond the date where

the rate would otherwise have gone into effect more than sixty days, or the time that the commission is considering reaching its decision, of four months, is equivalent to giving the commission the power to initiate rates?

Mr. KNAPP. It is equivalent to giving the commission the power to prevent the advance in rates during that period.

Mr. RICHARDSON. But you can see that in effect it is practically giving the commission the power to initiate rates.

Mr. KNAPP. No; because the rate is already initiated and there, and has been put in by the railroad.

Mr. RICHARDSON. It has not gone into effect.

Mr. KNAPP. Oh, yes. They had a rate before they filed the new tariff.

Mr. RICHARDSON. It would make a different rate. How many railroad rates on an average probably in a year are filed before the Interstate Commerce Commission?

Mr. KNAPP. Oh, a great many thousands.

Mr. RICHARDSON. A great many thousands. Now, those rates, as I understand it, are often changed?

Mr. KNAPP. Yes; in the vast number of railroad rates the changes are quite numerous every day.

Mr. RICHARDSON. And every time that change takes place, or they propose to make a change, then the functions of the commission would come in under that clause that allows the railroad to give thirty days' notice of any change that they intend to go into effect. Then you would take charge of that and review it—would have a right to review it—up to sixty days after the date it would go into effect otherwise. Now, does not that give you the power to supervise practically every rate that is fixed by the railroad?

Mr. KNAPP. To a certain extent, of course; probably 99 per cent of those changes would not be postponed.

Mr. RICHARDSON. Not be postponed by the commission?

Mr. KNAPP. No; slight changes are going on all the while.

Mr. RICHARDSON. Judge, isn't it a fact, from your observation and knowledge of the workings of the transportation laws of the country, that the railroads—the common carriers—now frequently reduce their rates for the accommodation of the public on occasions?

Mr. KNAPP. Yes.

Mr. RICHARDSON. And everybody is allowed, whether they are going on the business of that particular occasion or not, to ride under that reduced rate. Don't you believe that this power that you ask for an extension of would in its effect make rigid the rate; there would be no such elasticity as has been going on?

Mr. KNAPP. I don't think so, and I don't see why it should be so.

Mr. RICHARDSON. Why would a railroad want to reduce a rate to accommodate the public on a certain occasion when, after it reduced it, it could not go back to the same rate again unless it gave thirty days' notice to the commission?

Mr. KNAPP. It has to now give thirty days' notice.

Mr. RICHARDSON. Then it would never change in accommodation to the public?

Mr. KNAPP. It does not happen now. The commission has made regulations under its present authority for pretty much every kind of excursion rates.

Mr. RICHARDSON. But you never have had any authority, as I understand it, when a railroad gives the thirty days required by the statute that it is going to increase a rate, to review that before it goes into effect under the present law, have you?

Mr. KNAPP. We probably haven't that authority, at least that is my opinion.

Mr. RICHARDSON. You practically have never exercised it, have you?

Mr. KNAPP. I think not.

Mr. RICHARDSON. And for that reason this bill is undertaking to make that a law?

Mr. KNAPP. No; I don't so understand it at all. It simply gives the commission authority, when complaint is made, or when by reason of its general knowledge it believes that such action ought to be taken (and the rate is advanced) the power to postpone the taking effect of that advance for sixty days more until the commission can investigate it.

Mr. RICHARDSON. But, then, this bill goes still further, as I understand it—and if I am not right I know you will correct me—and says that if at the end of that sixty days, after the rate should have gone into effect otherwise, you have not reached the decision, the rate goes into effect anyway. What is your opinion as to that?

Mr. KNAPP. For one reason, undoubtedly, to in effect require the commission to act with promptness in disposing of these questions; not suspend a rate or prevent a rate advance by the exercise of power equivalent to an injunction and then delay an investigation indefinitely.

Mr. KENNEDY. I want to ask you about the operation of section 2 of the Hepburn law. There were some decisions of the commission made with reference to import rates which I understand were reversed by the courts, were they not, under the operation of section 2, which is amended by section 2 of the Mann bill, the import rate?

Mr. KNAPP. The commission held originally, before I became a member of it, that this law, and the commission appointed to administer it, had no extraterritorial jurisdiction, and therefore an import rate less than the domestic rate from the same port was in violation of the act to regulate commerce. The Supreme Court held differently; that the law did not mean that.

Mr. KENNEDY. One of the cases was a case on a shipment from New Orleans to Dallas, Tex. Do you remember what the import and domestic rates were?

Mr. KNAPP. If you refer to the old import rate case, that case involved the difference between import and domestic rates through the port of New Orleans to interior destinations.

Mr. KENNEDY. The rate on 100 pounds of freight from a port in Germany to Dallas, Tex., as I remember, was 33 cents. The rate over the same line on the same character of goods was something like 65 cents, carrying American goods part way over the same line. The commission held that that was an unfair discrimination and, as I understand it, the Supreme Court reversed that because of the presence in section 2 of the words "under substantially similar circumstances and conditions." They reversed it on the ground that an import shipment was not "under substantially similar circumstances"

as a domestic shipment. Now, what, in your judgment, would be the operation of section 2 in the Mann bill if passed?

Mr. KNAPP. As I understand it, it is intended to prevent an import or an export rate lower than the domestic rate from or to the same port.

Mr. KENNEDY. Now, have there been many complaints come before the commission on account of these lower import rates?

Mr. KNAPP. Oh, yes; the commission has had a good many complaints.

Mr. KENNEDY. I would like to have you state for the benefit of the committee what the railroads are doing generally in that regard, if that matter has come officially to the attention of the commission?

Mr. KNAPP. Generally the import rate from a port to a given interior destination is less than the domestic rate on the same articles from the same port to the same destination, the difference varying greatly with different articles and different destinations. In some cases the difference is very slight, while in other cases it is very great.

Mr. KENNEDY. Does your commission, in considering these rates, take into consideration the competition that there is between manufacturers and producers as well as the competition between railway lines?

Mr. KNAPP. Yes; we take into consideration every fact and circumstance which has a proper bearing upon the question to be determined.

Mr. KENNEDY. Now, out of some data that I received from your secretary I learn that the railroads are making a rate now on iron ore from New York to Pittsburg \$1.20 per ton below the rate that a German would have to pay on the same imported iron ore to Pittsburg.

Mr. KNAPP. That may be the fact. I have not had occasion to examine the case.

Mr. KENNEDY. Don't you think that there ought to be vested in some commission power to correct that?

Mr. KNAPP. I do.

Mr. KENNEDY. Has your commission thought out any way in which this language in section 2 of the Hepburn bill ought to be amended in that regard?

Mr. KNAPP. Well, I am not prepared to say what the commission as a body would officially recommend in that regard.

Mr. KENNEDY. I represent a district that makes a great deal of pottery. You know about the way in which imported pottery is distributed in this country on import rates as compared with the domestic rates for distributing our pottery?

Mr. KNAPP. Well, now, that is an article which very well illustrates this whole situation, and if it be your pleasure, I would like to take a moment to discuss it.

The CHAIRMAN. It is very important and we would like to hear you.

Mr. KNAPP. Very large quantities of crockery are made in this country, in New Jersey and in the vicinity of New York, and a very large amount of crockery is imported from foreign countries. This provision in the Mann bill would prevent a road from making any lower rate on the imported crockery than it makes on the domestic crockery from the same point to the same interior destination. Now, take the Pennsylvania Railroad as one of the great lines leading out

of New York. I will assume that of the total crockery which that road carries, say to Chicago, 90 per cent of it is domestic and 10 per cent imported.

Now, suppose this bill becomes a law, what will the Pennsylvania Railroad do; what must it do? Advance its import rate to its domestic rate, because it can not afford to reduce its domestic rate to the import rate. The loss of net revenue by the reduction of its domestic rate might exceed its gross revenue or its import traffic, and it could do nothing else than advance its import rates to the domestic basis. And for another reason: Crockery is in a class with many other articles, and the rates on the different classes bear certain relations to each other. If the Pennsylvania Railroad reduces its domestic rate on crockery, there is perhaps no reason why it should not be required to reduce correspondingly upon scores of other articles. But the Canadian Pacific, leading from the port of Montreal, can reduce its domestic rate to the import rate because it has no domestic crockery to carry. The Baltimore and Ohio can reduce its domestic rate to the import rate because it has no domestic crockery to carry from the city of Baltimore. The Chesapeake and Ohio and the Norfolk and Western can reduce their domestic rates to their import rates because they have no domestic crockery to carry. The Illinois Central can reduce its domestic rate to its import rate from the port of New Orleans because it has no domestic crockery to carry, and its domestic rates are only paper rates. What is the result then? The crockery all comes in through Montreal or Baltimore or Newport News or New Orleans, and the final outcome is that you simply transfer some of the traffic from the trunk lines now carrying it from New York to the lines leading from these outports and the crockery gets into the country on exactly the same rate as now.

Mr. KENNEDY. But now, under the present régime, our great factories are lying along a set of lines that the present practice practically puts under no obligation to them in this great scheme of competition and help. Why should not the Pennsylvania road be the natural ally of factories along its line?

Mr. KNAPP. It should be.

Mr. KENNEDY. To enter into competition as an ally of theirs, with American factories in Germany and France that have other lines available for their shipments.

Mr. KNAPP. Don't misunderstand me and suppose that I am in sympathy with the present situation. I deplore it as much as you do.

Mr. KENNEDY. I hope you are not.

Mr. KNAPP. I am only suggesting that the method of correction attempted by this bill would, I think, be ineffectual.

The CHAIRMAN. Referring to the illustration that you gave. As I recall the import rate cases, about the strongest argument that was made in favor of the decision that was afterwards rendered by the court in the Illinois Central Railroad case, was that that would prevent them from doing the very thing which you say this construction would permit them to do; that is to say, if they could charge a lower rate on import goods, they could get a part of this crockery business, or other business by way of New Orleans; whereas if they charge no less than they charge on the domestic business, they would be entirely cut out of that cutthroat business which was brought by the way of

New York City and which they wished to bring by the way of New Orleans.

Mr. KNAPP. That may be; a given road, as to an article from another port than New York, might be in the same situation that I suggested the Pennsylvania would be in from New York; that it would go out of the import business by advancing the import rate to the domestic rate.

The CHAIRMAN. Don't your argument go to the question of the whole rate business for the whole United States; that is, the situation arising between two roads where one has a certain industry upon it alone and when another has not?

Mr. KNAPP. Within certain limits; yes.

Mr. KENNEDY. And the road ought to be the natural ally of factories along its line; and if foreign factories compete with them in this country they ought to be required, in my judgment, to carry the American goods as cheaply as they do the foreign.

Mr. STEVENS. Even though it confiscates the property of a railroad?

Mr. KENNEDY. It would not confiscate the property of a railroad. Would it be any loss of a profit for the railroads to carry pottery made in New Jersey and in the Middle West for the same rate that they carry the imported pottery?

Mr. KNAPP. Well, I assume that the cost to the railroad is practically the same in one case as in the other.

Mr. ADAMSON. According to your illustration a general reduction throughout the country might be entirely at the expense of the Pennsylvania Railroad Company and hurt nobody else.

Mr. KNAPP. As I said, the ultimate outcome would be that the crockery would come in through other ports than New York at the same rate it does now, and the Pennsylvania would not have any to carry.

Mr. STEVENS. In other words, our section of the Central States, the Mississippi Valley, uses a large amount of crockery and produces none. If Mr. Kennedy's argument prevailed, why would not the effect be that we would import crockery either by the way of New Orleans or by the way of the Great Lakes over the Canadian Pacific, and we would not use domestic crockery at all, or very little?

Mr. KNAPP. Well, the commercial effect you can estimate just as well as I can. I am simply speaking of the transportation effect.

Mr. STEVENS. That would be the transportation effect. The Canadian Pacific would do their business on the north, the Illinois Central and the Frisco lines would do the business on the south, instead of its coming through the trunk lines of the East.

Mr. KNAPP. That might happen.

Mr. KENNEDY. And the Pennsylvania Company would be compelled, if it wanted to get any of that crockery trade in the Middle West, to be the ally of the factories along its line in that general scheme of competition.

Mr. KNAPP. It might be such a reduction of its domestic rates as would deprive it of ability to pay dividends.

The CHAIRMAN. That is on the theory that competition between railroads is liable to drive them into bankruptcy. Don't you think that competition between railroads is rather desirable, what little we have of it?



Mr. KNAPP. But I am not saying that even under the present law we do not get some benefit from railroad competition.

Mr. KENNEDY. You do not think that the commission in this matter ought to have conferred upon it the power to make rates, and that rates ought to be made with reference to the public policy as clearly declared in our tariff bill? Railroads are now nullifying our tariff bill.

Mr. KNAPP. Not because they want to, but in a given instance because they have to or not carry the business.

Mr. KENNEDY. Ought they to be permitted to?

Mr. KNAPP. Let us see; take another illustration. When we investigated the matter these were the facts: The rate on plate glass from Boston to Chicago is 50 cents. There is a through rate from Belgium to Chicago of 40 cents—

The CHAIRMAN. Do you think that is fair?

Mr. KNAPP. That is not the question now.

The CHAIRMAN. Yes—

Mr. KNAPP. Just one moment. Out of which the domestic carrier at the time we investigated the matter got 25 cents; and we had the manager of the domestic line before us and said: "Why do you do this?" "Well," he said, "I do not want to; it is an outrage;"—I use his own words—"but what am I going to do? There is a through rate from Belgium to Chicago by New Orleans and the Illinois Central of 35 cents. If I put up my rate on plate glass to the domestic rate it will all go through New Orleans; it won't benefit any shipper along my line to have me go out of the import business."

The CHAIRMAN. And that is the natural competition that comes from water lines. Are not the people of the country entitled to the benefit of that natural competition so that railroads may have some competition?

Mr. KNAPP. Well, Mr. Mann, it might be argued, although it is not a question for me to decide or express an opinion about, that the consumers of the country are benefited by railroad rates which in effect, in many cases, practically nullify our tariff laws.

Mr. KENNEDY. With that operation upon the part of the railroad, it would be cheaper to own a factory to supply the markets of this country from outside of the country, wouldn't it?

Mr. KNAPP. I don't know; it might be.

Mr. KENNEDY. Do you know whether or not this discrimination is going on as to all the products of the factories of New England?

Mr. KNAPP. I don't think so, as to all of them.

Mr. KENNEDY. Have you dug down into any species of traffic where it does not exist?

Mr. KNAPP. I have not been looking for it; I don't know.

Mr. KENNEDY. Now, the same thing applies to the export trade.

Mr. KNAPP. You have opened up, as you are aware, a very large question.

Mr. KENNEDY. I know it is a big question.

Mr. KNAPP. A question of public policy.

Mr. KENNEDY. As a matter of fact, foodstuffs now can be transported from the Middle West and be sold cheaper in the principal cities of Europe than they are now sold in our eastern cities, and the cost of placing them in Washington is greater than it is in Berlin, London, or Paris.

Mr. ADAMSON. I suppose that is no more remarkable than that the output of certain manufactories is sold cheaper over there.

Mr. KENNEDY. The railroad rates will permit them to be.

Mr. KNAPP. Let us look for a moment at the export situation. At the present time I think the export rate on grain to New York, say from Chicago as a typical point, is 2 cents a hundred pounds less than the domestic rate. That is approximately the difference which usually prevails between domestic and export rates on grain through the port of New York. The export rate from the Middle West and Galveston must be low enough so that added to the steamer rate from Galveston to some foreign destination, which would be more than the steamer rate from New York, will make a through rate practically the same or a little less in order to let any grain go out through Galveston.

Mr. STEVENS. And the same through Montreal?

Mr. KNAPP. Yes. Now, the export rate on grain to Galveston is only half the domestic rate to Galveston.

Mr. KENNEDY. At times like this, don't you think it would be a good thing to have vested in your commission power to stop that sort of thing? Is there any public policy at this time that would permit the railroads to be distributing foodstuffs to all the world cheaper than they are doing it at home to their own people?

Mr. KNAPP. But the railroads from Kansas City to Galveston will say, "It is no advantage, no possible advantage, to the people of Texas to have me go out of the export business."

Mr. ADAMSON. We might repeal all duties on foodstuffs to try the effect it would have for a few months.

Mr. KNAPP. And they say, "I must make this lower rate or go out of business."

Mr. STEVENS. That would be confiscation of property, and they would go into the hands of a receiver in sixty days. Another point: Have not complaints been repeatedly made to your commission that the export business on the Pacific coast to Asia has been eliminated because of the existence of the requirement of filing schedules of rates for the domestic part of the rate, and the fact that thirty days' notice is necessary to be given?

Mr. KNAPP. I think that that charge has been made, but it is not founded in fact.

Mr. STEVENS. Is not the complaint made that a tramp ship can make an agreement with a domestic line exporting cotton, or whatever it may be, and that by means of any sort of a rate, in order to get a cargo, can get the business; and that a domestic through rate should be made over, say, the Pacific Mail and the Southern Pacific?

Mr. KNAPP. The commission has simply held, and as to the correctness of its conclusion in that regard I have not the slightest doubt, that it has no jurisdiction over the ocean carriers. All it has said is, "You are free to initiate your own rates; you may make as much difference as you choose, in the first instance, between your domestic rate to a port and your export rate to that same port. All we ask is that you put in your tariff what you charge in both cases." And we have said further, "In the exercise of discretion, which we have under the sixth section of the law, we won't require you to give thirty days' notice of changes in your export rates; you may advance them on ten days' notice and reduce them on three."

Mr. STEVENS. Is that a general order, or do they have to have special permission?

Mr. KNAPP. I think we have a general order as to the Pacific coast ports. The carriers to the Atlantic ports don't have any trouble. They make their rate to the port for export, and they make their domestic rate to the port. They have no difficulty in complying with the law and our regulations. Now, the truth about it is, Mr. Stevens, that certain transcontinental lines don't want the public to know how much less they get out of business to the Orient than they get out of the same business to the Pacific coast.

Mr. STEVENS. And rather than give information, they abandoned the oriental business; that is the situation, is it?

Mr. KNAPP. That may be so; but to hold the commission responsible for it is altogether unfair.

Mr. STEVENS. No; if that situation exists, then it is not the commission who would be responsible for enforcing the law, but Congress for bringing the law into existence. That is the point, isn't it?

Mr. KNAPP. Yes.

Mr. STEVENS. If that is the situation, if it has reduced our oriental export as it has been reduced, the fault is with Congress and not with the commission.

Mr. KNAPP. I feel very confident in saying that it is not with the commission.

Mr. STEVENS. But this situation exists. The exports have been reduced tremendously; probably 60 per cent.

Mr. KNAPP. So I suppose they have through the Atlantic ports also.

Mr. STEVENS. The trade has fallen off, to the great disadvantage of this country. Our water carriers on the Pacific are not doing the business, or have gone out of business, and the claim has been made and presented to your commission, as well as to the Congress, that it is caused by the requirement to file their rates.

Mr. KENNEDY. Mr. Hill, in a magazine article not long ago, said that it would be impossible to get trade in the Orient for wheat unless they could put our wheat into China lower than it was sold at home. He remarked that the Chinese would not eat our wheat, but would continue to eat their rice. Do you think the American railroad ought to be permitted to distribute, as a distributor, this whole thing on the face of the earth? What reason exists, in good policy, why the railroads should be carrying and distributing for foreign countries cheaper than they carry and distribute at home?

Mr. KNAPP. They would answer that they don't do that unless they have to to get the business.

Mr. KENNEDY. But they would get business if they carried it to Washington; we would eat more down here if we could get it a little cheaper.

Mr. STEVENS. But transcontinental lines do not run to Washington.

Mr. ADAMSON. They made the same answer in regard to exports of manufactured articles.

The CHAIRMAN. Don't you think it intolerable to have freight shipped from Rome, say, to Chicago, by the way of New Orleans, for a less freight rate than if shipped from New York City to Chicago?

Mr. KNAPP. I do.

The CHAIRMAN. Isn't there some way by which we can remedy that condition?

Mr. KNAPP. I hesitate to advance my personal views.

The CHAIRMAN. Well, it may be that you are not representing the commission. Will you give us your personal views, then?

Mr. KNAPP. I can see only one way to deal with this problem, which is one of great magnitude and of vast importance and full of complexity. The difficulty to-day, as the railroads claim, is that they are not permitted to agree with each other and establish just and reasonable differential rates on import and export traffic to and from the various ports. I think, by the way, that import and export traffic can be differentiated, and reasons that apply to one do not apply to the other. There may be excellent economic reasons based in sound public policy for allowing export rates which are lower than domestic rates, but when it comes to such wide differences on import rates, which not only, in instances, nullify our protective tariff on the article, but subject our domestic producers to most serious competition—sometimes fatal competition—it is a very different situation.

The CHAIRMAN. In reference to nullifying the tariff, I would like to suggest to you that one of the reasons given for maintaining or increasing the tariff on some things has been that very discrimination.

Mr. KNAPP. I am perfectly willing to disclose my plans for dealing with this situation. I would give the railroads the right to agree with each other; and it all comes down at last to a question of differentials through the different ports. Personally I see no reason why the import rates through the port of New York should be less than the domestic rates. New York is the great commercial center. It is the place to which all the steamships come from all lands; it is the place to which many railroads go. It is the money market, and the great businesses of the country are largely controlled there.

Mr. ADAMSON. It is almost large enough to get along without further help, so that we might be able to give some attention to other parts of the country.

Mr. KNAPP. But the import rate through the out ports, like Baltimore, Newport News, Norfolk, Pensacola, Mobile, New Orleans, and Galveston, must be less than the domestic rate in justice to the railroads and the public alike; and it comes at last, as I say, to making a proper set of differentials, which will fairly distribute the traffic as between the different ports and the different rail carriers, and keep the rates as nearly as we can up to the level of the domestic rates.

Mr. KENNEDY. Then there ought to be somewhere vested a discretion to control that matter, ought there not?

Mr. KNAPP. Yes, I think so.

Mr. KENNEDY. All the power of the commission was taken away by the action of the courts in construing section 2 of the Hepburn law.

Mr. KNAPP. Not section 2 of the Hepburn law; the Hepburn bill did not change section 2.

Mr. KENNEDY. Section 2 of the original act?

Mr. ADAMSON. "Similar circumstances and conditions." I understand you favor retaining those words at all events, no matter which direction these bills take.

Mr. KNAPP. What I have in mind may be illustrated by the export grain situation. Grain furnishes a large volume of traffic which is handled on very narrow margins. But slight difference in the cost of moving it to the foreign destination will determine the route it takes. It has been testified to before the commission that a difference as small as one-eighth of a cent a bushel will determine whether the wheat shall be shipped through Baltimore or New York. Now, on account of the disadvantages of the outports, the comparatively infrequent number of sailings from those ports, the very small ship tonnage from those ports in comparison with New York, and the greatly less number of foreign destinations reached through those ports, the through rate must ordinarily be a little less through the outports than through New York in order to attract the business; in other words, you must balance the commercial advantages of New York by some slight transportation advantage through the other ports in order to distribute the business.

Mr. STEVENS. Right on that point, if you attempt to make a rigid rate or attempt to force an agreement with import differentials, don't you necessarily force a larger volume of imports to the north through Montreal and south through New Orleans and Galveston and larger volume of exports through the same ports, thereby increasing the number of ships and the ability of those ports and decreasing the ships and ability of the Atlantic ports accordingly?

Mr. KNAPP. That would all depend upon the differentials.

Mr. STEVENS. But how are you going to force the Canadian Pacific on the north and the Kansas City Southern or the Missouri, Kansas and Texas on the south to make differentials so that the Pennsylvania Railroad can get business? You can't do it unless you have government ownership on the one side or government guarantee on the other.

Mr. KNAPP. Or, since the Canadian road operates partly in a foreign country, we could prevent it from entering into ruinous competition with our domestic lines.

Mr. STEVENS. But you can not prevent them from sailing on the Lakes?

Mr. KNAPP. No.

Mr. STEVENS. It can not be done.

Mr. KENNEDY. But it has to get its traffic to the Lakes by passing over roads in our country?

Mr. KNAPP. Take most commercial articles, Mr. Stevens, the disability of the port of Montreal, shut up some months in the year by the ice, and for other reasons, would, I think, prevent the bulk of the traffic ever going through that port, or any inordinate share of it, if the rates through the other ports were fairly adjusted to each other. Besides, I think this is true, that the Canadian Pacific or the Grand Trunk, like our domestic roads, have many relations with each other; many things they want of each other; they have an influence upon each other in adjusting rates, and there is not the disposition to cut each other's throats all the while; and they can, if they have the authority of law, agree upon rates which probably would be fairly satisfactory to them.

The CHAIRMAN. You don't think there is any real danger of the railroads going into bankruptcy through ruinous competition, do you?

Mr. KNAPP. I hope not.

Mr. TOWNSEND. You started in to express an individual opinion, with the understanding that it is your individual opinion, and you have suggested that one remedy perhaps might be through agreement. Have you any other suggestion to make?

The CHAIRMAN. Did the agreement that you referred to have reference to an agreement merely as to the rate, or a pooling provision as to freight?

Mr. KNAPP. Rates. I have sometimes thought that if I had the power I would get all of these railroad managers together and I would say:

Here, you must agree on a fair differential basis of rates as between these different ports. If you can not agree I will fix them myself, and then you try them for six months or a year to see how they work, and you may come back here and see if they need readjustment.

In other words, I believe it is possible to maintain an import rate through the port of New York which is practically the domestic rate, and with differences through the other ports materially less than now prevail, and that I think is about all you can do, and all that is in the interest of the country that you should try to do.

Mr. KENNEDY. I made a study of import rates as compared with domestic rates on pottery, and the rate from Liverpool, England, to Chicago is substantially the same as from Liverpool on the Ohio River to Chicago and to other points on the continent. It is practically the same rate. And when you go further west the domestic rate jumps right up to the clouds, excluding our pottery from the Middle West. What was the occasion for that wonderful advance in the domestic rate beyond Chicago?

Mr. KNAPP. I do not know.

Mr. KENNEDY. Is there any reason unless it be to help the foreign factory?

Mr. KNAPP. Oh, railroads don't make rates to help foreign factories.

Mr. KENNEDY. They used to.

Mr. KNAPP. They make rates to get business.

Mr. KENNEDY. They used to discriminate between domestic producers and the pottery makers that import their pottery here from Americans in Germany and France who built their factories over there for some reason.

Mr. KNAPP. I have been led into a not very instructive talk, and all I have meant to say was, with the utmost respect, that I can not believe that the plan proposed in this bill, which creates a hard and fast rule that no export or import rate shall be less than the domestic rate, would be wise legislation.

The CHAIRMAN. When I drew that section of the bill it was not for the purpose of committing myself to the proposition involved any more than to the other provisions of the bill, but it seemed to me that it was a matter that deserved attention from the legislative body. Present conditions have become well-nigh intolerable. If we give to the commission power over these rates, wouldn't that answer the question as to the authority to make differentials, or would you, under the existing law, be required to make the same rate on domestic freight and imported freight to the same point?

Mr. KNAPP. I don't think I care to say any more than I have upon that point. It would come, of course, to giving the commission power

to fix the minimum rate. I think there is very much to be said in favor of that.

Mr. KENNEDY. Wouldn't it be a good thing to fix the minimum and to give the commission a little power, at least, and fix minimum rates?

Mr. KNAPP. I have often thought so.

Mr. KENNEDY. In the case of railroads where they compete with water carriers?

Mr. KNAPP. I am inclined to favor that suggestion.

Mr. ADAMSON. That might be disturbing something that God made, as remarked by some member of the committee a few minutes ago.

Mr. KENNEDY. The railroads have practically destroyed a utility of great importance that God made by discriminating against the traffic on the Mississippi River.

Mr. ADAMSON. To that I object.

Mr. KNAPP. It seems plain to me that it is desirable. It is in the interest of the country as a whole that this traffic, both export and import, should be distributed, and whatever plan will produce the most equitable distribution of that business as between the different lines and the different ports and at the same time restrain, so far as practicable, any unreasonable competition as the result with our domestic producers is a thing we should all want to accomplish.

Mr. KENNEDY. Do you think that thoroughgoing regulation of common carriers ought to give you power to stop destructive competition?

Mr. KNAPP. Yes; that is my personal view.

Mr. KENNEDY. The conferring upon you of power to fix minimum rates would enable you to do that, wouldn't it?

Mr. KNAPP. Apparently it would.

Mr. STEVENS. But that would establish a system of rigid rates, wouldn't it, that would be practically very hard to change in order to accommodate business conditions in the country?

Mr. KNAPP. Yes; but I understood the question as put by Mr. Kennedy to imply not the fixing of a particular figure from a given port to any interior destination, but it would work out a percentage relation or some other prescribed relation of rates as between the different ports.

Mr. STEVENS. But how could that be avoided? If you have water competition, for example, on the Lakes, which would be the basis of fixing a line to the Central West, how are you going to avoid fixing a minimum rigid rate to meet that competition?

Mr. KNAPP. Possibly you may not be able to in that particular case.

Mr. STEVENS. If you can not avoid it in that case, won't that system extend gradually?

Mr. KNAPP. It might.

Mr. STEVENS. If that is done, do you think that the people of this country will allow you to fix a system of rates below which they can not get their products carried?

Mr. KNAPP. I am only saying that there may be cases where I think it would be wise to fix a minimum rate.

Mr. KENNEDY. If we attempt at all to create that basis, then we will have to clothe somebody with discretion to act sanely in that regard.

Mr. KNAPP. It seems to come to that.

Mr. BARTLETT. I want to ask you a question that does not relate to this subject that is being discussed now. You were asked by Judge Richardson with reference to the power to originate rates, and this bill now under consideration seems to confer the power. Has the commission ever given any consideration to section 13 of the original act, which provides:

Said commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

Now, has the commission ever investigated or determined whether or not they had the right to institute any inquiry on its own motion "in the same manner and to the same effect as though complaint had been made?"

Mr. KNAPP. There is no question about our very ample powers of investigation under that provision, and they have been frequently exercised. The point is that, in my opinion, certainly, and I think that is the view of most of my associates, we can not make an order under the fifteenth section in a proceeding instituted upon our own motion. We can investigate, get at all the facts, but we can not apply any remedies.

Mr. BARTLETT. That has been the construction of the commission?

Mr. KNAPP. Yes.

Mr. BARTLETT. Then the only amendment necessary, in the opinion of the commission, if it is decided to remedy that, is not to give you additional power to investigate, but power to enforce the result of the investigation?

Mr. KNAPP. Yes; as is provided in the Townsend bill.

Mr. ADAMSON. Before we leave this question, I would like to ask: In any event, as to this provision you have been talking about, you favor the conditioning clause under "substantially similar circumstances and conditions," and whether in local traffic or foreign traffic?

Mr. KNAPP. If I understand you, that is what I would do.

Mr. ADAMSON. Mr. Mann's amendment would abolish that clause in all events.

Mr. WASHBURN. Referring to section 7 of the Townsend bill, in which common carriers are allowed to make agreements touching classifications of freight and so on, we had a witness here the other day, Mr. Pierce, I think, representing one of the railroads—I think the Chicago, Rock Island and Pacific—who stated to the committee that the detail work required under this section would make it almost unworkable. He said that the meetings between the railroads were of almost daily occurrence, and that the operation of this section would break down under its own weight, and he recommended that all of the section be stricken out after the word "unlawful" line 2, page 13. I would like to inquire what your opinion would be as to that proposition, whether the detail work required under this section would make it unworkable, or need to make it unworkable. His contention was that the agreement would cover such a wide area and so many rates that it would make the mechanical work alone almost overwhelming, and that there would be a great duplication because



almost substantially all of the information would, under the existing law, be in the possession of the commission.

The CHAIRMAN. Well, if you will pardon me, his position was that they simply file an agreement to have the same rates, and that would not amount to anything, and if the agreement included the rates that would be a duplication of the tariff sheets.

Mr. KNAPP. I feel obliged to say that in all the discussions of this subject as to repealing or modifying the present section of the law, and the antitrust law as well, and providing for, in effect sanctioning, certain kinds of agreements between the railroads, this has been the first time it has been suggested to me that they could not file with us copies of their agreements after made. I have discussed this question with many railroad men many times, and I never heard that point made before, and it has been previously discussed before this committee.

Mr. TOWNSEND. You see no obstacle in the way of filing such an agreement as complies with the provision?

Mr. KNAPP. I don't in the least. I don't appreciate the force of the objection. We provide now methods under which the duplication of tariffs is very largely avoided.

The CHAIRMAN. Here was the point that he made: They have an agreement and agree simply to make the same rate—the tariff sheet makers to make out the same rate, and that would not amount to anything unless it stated the rate, according to him—whereas if you inserted the rate in the agreement that would be a duplication of tariff sheets which would have to be filed ten days before the tariff sheet itself would have to be filed.

Mr. KNAPP. I would not say so. If they file a memorandum with us that they would have the same rates between certain points, the tariff would show what those rates are.

Mr. KNOWLAND. To quote Mr. Pierce's own words:

If the railroads are authorized to make an agreement, and if they put the rates in and have the tariffs express the agreement just as fully and effectively as any other document that could be filed, where is the necessity of requiring the great burden to be imposed upon the railroad companies and the Interstate Commerce Commission of keeping superfluous documents?

Mr. STAFFORD. He was there referring to the condition that only railroads be required to furnish statements of rates. There is no necessity of requiring the railroads to post their tariffs throughout the respective stations.

Mr. WASHBURN. Right on that point, I would like to ask Mr. Knapp if it would not relieve the condition somewhat if after the word "agreement" in line 3, page 13, we were to insert these words: "In such detail as the commission may require?" And that would leave it optional with the commission to vary the requirements in a way which would relieve the railroads of any unnecessary duplication. Do you see any advantage in that?

Mr. KNAPP. I see no objection to that, Mr. Washburn. It might be well to give in that connection, if the provision should be adopted, some power to prescribe rules and regulations in relation to the matter. But I do think that the carrier should be required to file with the commission, and make a matter of record with the commission, what they have agreed to do, but how they shall do it and how the work of doing it can be simplified is quite another thing.

Mr. WASHBURN. That may be left to the commission to determine.

Mr. KNAPP. I see no reason why not, as they make tariff regulations now.

Mr. TOWNSEND. Do you think it advisable to cut out the remainder of that section?

Mr. KNAPP. That would license everything without making any record of it.

Mr. WASHBURN. But after the word "agreement" to put in "in such detail as the commission may require."

Mr. TOWNSEND. Very well.

Mr. RICHARDSON. Don't you think there are enough regulations of railroads already to insure what you are intending to do, to make fair and reasonable rates; and wouldn't you think it very well in that connection and paragraph, to stop at the word "unlawful." Just simply say, that such an agreement is not unlawful, and stop there. And haven't you got all the precautions in the Hepburn bill, and the acts that came down from 1887, to give all kinds of publicity, and to give the people notice; and would not all this other matter being attached to it complicate matters, and make it a tedious matter to find out what ought to be known?

Mr. KNAPP. I have already stated that I think if railroads could be given this right, and I think they should be, they should be required to make a record with the commission of what they have agreed to.

Mr. RICHARDSON. That does it; make them file it with the commission.

Mr. WASHBURN. I would like to ask you a question in regard to the creation of this interstate court of commerce covered by the first six sections of the bill. I understood you to express your approval, and the approval of the commission, in general terms. Am I to understand by that that you meant that if we were to have a court of commerce you approved of its creation in this way, subject to the suggestion you made, or that you and the commission are in favor of the creation of the court as an independent proposition?

Mr. KNAPP. I have presented the official statement of the commission on that subject. It would seem to me the clear inference from that statement would be that the commission does favor such a court if created in the manner suggested by our memorandum.

Mr. WASHBURN. Then may I ask you to outline briefly the reasons which have led the commission to the conclusion that the creation of this court is desirable?

Mr. KNAPP. In answer to your question I should like to be definitely understood as giving expression only of my personal views.

I regard the creation of a tribunal of this sort as highly important. There are many reasons which bring me to that conclusion. The rather fundamental reason is grounded in the fact that these are all questions of national scope and interest. They are in no sense the local and isolated questions which arise in the ordinary courts. It is important that there be one tribunal of first instance which shall pass upon all these questions so that the determination will be harmonious and consistent, and not as it is now, uncertain and conflicting in different parts of the country.

Mr. RICHARDSON. In connection with your definition, which I am interested in, I understood you to state yesterday in your testimony

that this commerce court, in its chief and principal functions, should not be allowed and does not allow such court to exercise any greater authority than the present circuit court exercises over the orders and proceedings of the commission.

Mr. KNAPP. As to jurisdiction, that is right. In the second place, Mr. Washburn, you would get real expedition. Now this is what happens. We have what is called the expediting law. The commission makes an order which the carriers are constrained to resist. They prepare and file a bill in which they ask for an injunction permanently staying that order. Then they make application for a temporary stay until the motion can be heard. Under the present law the Attorney-General may file a certificate which has the effect of requiring that at least three judges in that circuit in which the bill is filed shall get together and hear that case in the first instance. Now, they are all very busy men. Federal litigation is rapidly increasing throughout the country, and their calendars are crowded. The terms are fixed and the judges assigned to hold them in different parts of their circuits, and it is a very serious matter for judges and litigants if the judges must drop all of their business and leave the courts to which they are assigned, and get together to hear one of these cases. And delays are inevitable; they have occurred and will occur. It is not practicable to get three circuit judges together under ordinary conditions right off to hear one of these cases. They involve the examination of extremely voluminous records; for example, it was told to me that Judge McPherson stated that he spent three months on the Missouri passenger rate case. In the next place, while, as respects orders which the commission now has authority to make, the need of such a court is considerably, perhaps materially, lessened by these recent decisions of the Supreme Court, still our experience shows, and I think that is to be the experience of the future, that the greater part of those cases will not turn upon questions of judgment and discretion, but upon construction of the law, the authority of the commission, and surely not far away, the very great question of what is legal confiscation.

I had a statement prepared by our solicitor, who is a very excellent lawyer and who has lived with this law for a great many years, which comes to about this: That out of 31 cases, the most of which were filed during the last year and a half, and a majority during the last year, seeking to restrain orders of the commission, 24 of them would not have been affected by these decisions of the Supreme Court, because they were based upon construction of the statutes or the contention that the commission exceeded its jurisdiction or authority, independent of the question of judgment and discretion.

Mr. STEVENS. To put it in another way: How many cases would come within the scope defined by these decisions of the Supreme Court of the United States, and could not get into the court of commerce under the provisions of this bill here?

Mr. KNAPP. All together?

Mr. STEVENS. This court of commerce has a certain jurisdiction. The decision of the Supreme Court in the Illinois Central case defines what jurisdiction courts have over orders of your commission. How many of that class of cases that this court would have jurisdiction of, that your orders could be assailed, would have been in the court of

commerce if it had been in existence, since the passage of the Hepburn Act?

Mr. KNAPP. As I stated, I think some 31 or 32 bills have been filed restraining orders of the commission since the Hepburn Act was passed; but you will bear in mind that the commission made no very important orders of large effect upon revenues of railroads for perhaps a year or a year and a half, and not many until two years or more after the Hepburn bill was passed, so that most of these cases have been brought during the last year and a half, and, I should say, the majority in the last year.

Mr. STEVENS. I notice in your report of 1908 a statement that, I think, 17 cases had been filed up to that time assailing the orders of the commission?

Mr. KNAPP. That conforms to my statement. There are thirty-odd in all.

Mr. STEVENS. I have not examined the last report.

Mr. KNAPP. So that, as I said, about half were brought within the last year.

Mr. KENNEDY. There are some features in this bill which amplify your jurisdiction that might produce a great many more cases.

Mr. KNAPP. I was going to add: In the second place, there is a feature of this so-called Townsend bill which I certainly regard with great favor. That is section 12. I think it an admirable piece of constructive legislation. It contemplates that the question of whether the purchase of an interest in one railroad by another will be in violation of any existing law shall be adjudicated in advance and not after the event. I am very much in favor of that.

Mr. RICHARDSON. You are in favor of the general principle, not the details.

Mr. KNAPP. I don't care so much about the details. I do not hesitate to express myself as very much in favor of the legislation involving that plan. As Mr. Stevens says, I am not implying the approval of every detail of this bill. It may be open to criticism and need amendment.

Mr. RICHARDSON. But the general principle you approve?

Mr. KNAPP. Yes; that one section, or the enactment of a law involving that proposition, will give a large amount of work to the court of commerce. We read every day about schemes by which one railroad is acquiring an interest in another. It is well known that our railroad system has been built up by various forms of acquisition, and those who are interested particularly in financing such enterprises will be sure to come to this court and have a determination so that they may know whether the thing they propose to do is lawful or not. If that court says it is unlawful, it is ended right there. If that court says it is a lawful thing to do, then it enters a decree to that effect, which would have the effect of estopping the Government thereafter from attacking it as in violation of the antitrust law or any other law. It is perfectly obvious that if that plan is adopted they will avail themselves of it, and that will furnish a very large amount of work for the court, and it is work of a kind that ought to be done by one court.

It would be unfortunate, I think, for a scheme of acquisition to be presented to a judge of a court in California, say, and held to be unlawful and permanently enjoined, and a similar scheme involving the

same principles presented to a court in New York and held to be all right, for then you would have conflicting and inharmonious rulings, and you would never have the matter settled until a series of cases were taken to the Supreme Court. In other words, there are a class of questions to be presented under this twelfth section which call for prompt determination and for determination by one single tribunal, so that they shall be harmonious and consistent. And more than that, the jurisdiction of that court should be enlarged, in my judgment. For example, suggestion has been made that suits brought in federal courts to restrain orders of state commissioners should be required to be brought in this court. Now, you have in both of these bills a more or less elaborate scheme for controlling or regulating the issue of railroad securities, and while that puts certain duties and powers upon the commission, as it properly should in that regard, manifestly that is a scheme of legislation which itself is going to give rise to a great many questions; and while no jurisdiction is now given under the Townsend bill over litigation of that kind, I think it is altogether probable that it will be, as questions develop as to what the commission can do, and whether it has acted within its authority, or exceeded its authority, or made an order which any interest can attack. So, very crudely, Mr. Washburn, I have indicated some of the fundamental reasons why I think that such a court is needed and would perform a very useful function in our judicial system.

Mr. WASHBURN. I would like to ask two more questions. The first is whether, if it were not for the new duties created under this bill, for the attention of this court, you would still think the creation of the commerce court desirable?

Mr. KNAPP. Yes; I would myself.

Mr. WASHBURN. And then this other question, touching upon the adverse comment of the commission as I understood it yesterday, upon the methods of constituting this court. Would you mind amplifying along those lines why you think some other method would be better?

Mr. KNAPP. As my esteemed associate, Mr. Clements, said the other day before the Senate committee, when he was asked a similar question: "The ordinary way of constituting a court is to have the judges appointed by the President, and to give them a permanent official tenure." I do not know of any constitutional or logical reason why that could not be done by the Chief Justice as well as by the President, if it is to be done at all. But why a court that is to be made up by selection from the whole body of circuit judges, and which must be constantly changing in its personnel; what is the advantage of it?

Mr. WASHBURN. I haven't your testimony before me now; but is that your only objection to the constitution of the court as provided by this bill?

Mr. KNAPP. What the commission suggested was that the court should be composed of judges appointed thereto by the President, and to remain permanently therein.

Mr. TOWNSEND. The new bill provides that the President shall name the first five, and they shall be together on that court; and that after 1914 then they shall not be eligible to redesignation to that court by the Chief Justice until they have been off one year.

Mr. KNAPP. That is a change which approaches toward the commission's proposed amendment.

Mr. WASHBURN. I was interested in a more fundamental proposition than that. I understand that under the bill this court is to be made up of judges now in the different circuits, who are to serve for a certain length of time. My interest rather lies in asking Mr. Knapp if he is of the opinion that judges who are permanently appointed to this court will be in a position to render perhaps more valuable service than those who should be appointed to it from the circuit court by reason of the fact that their attention would be, through their tenure, directed to this particular class of questions.

Mr. KNAPP. I think that question should be answered in the affirmative.

Mr. TOWNSEND. Would you have no objection to that provision, even with your suggestion carried out, of making their tenure for life on this court, and to give the Chief Justice power to assign them to a circuit in case they were not busy with the work here?

Mr. KNAPP. No; if you are to retain the principle that this court, after it is first created, is to be made up by taking the judges from the body of circuit judges. Now, as I read your amended bill it means this: The President will appoint, by and with the advice and consent of the Senate, five additional circuit court judges, no two of whom shall be appointed from the same judicial circuit. Those five are to constitute the court of commerce, and the President will designate which one of those will serve for one, for two, for three, for four, and for five years, and after 1914 no judge can be redesignated to that court until after he has been away from it a year.

Mr. RICHARDSON. Under the revised bill?

Mr. KNAPP. Yes. This is the way it would work out: The President appoints five judges, and they make this court. At the end of the first year the designation of one man has expired, and the Chief Justice of the United States could name his successor. He could take that man, because it is before 1914, but he is not bound to take him; and he could take any circuit judge in the United States and put him on that court, and so with the next year, that is, after the court is first created, any addition to that court to take the place of a man who died or resigned, or whose first designation expired, would be from the whole body of circuit court judges, and the vacancy would not be filled thereafter by appointment by the President and confirmation of the Senate with a view to serving in that court, but the vacancy would be filled by the Chief Justice, who would have the power to select any circuit court judge from any part of the United States and put him on that court.

Mr. WASHBURN. In a word, you believe it would be better to have an independent court, the judges of which should for tenure be confined to the construction of this class of cases alone?

Mr. KNAPP. Yes; although I do favor a provision in the Townsend bill which says that if there is not work enough to keep these judges busy—

Mr. WASHBURN. That is another matter.

Mr. KNAPP. I would have the court a permanent one in its personnel. I would have judges appointed to that court by the President. Under the bill, while the court, as such, would have only this limited and exclusive jurisdiction, the judges of that court would be full circuit court judges, and would be eligible to do circuit court work in any circuit in the United States; and if there was not business

enough in this court to occupy their time, then any one or more of them could be assigned to duty wherever there was need of temporary judicial assistance.

Mr. WASHBURN. Is it your opinion that there would be business enough for this new court to keep it busy?

Mr. KNAPP. I think so; yes.

Mr. STEVENS. I would like to ask a question which approaches, fundamentally, the same lines. As I understand, from the decision of the Supreme Court in those cases defining your jurisdiction, and from the language of the reports of your commission, the orders of your commission can be assailed in two great classes of cases, the question of constitutionality and the question of jurisdiction. Now, where a rate has been made by the railroads, and contested before your commission, and your commission sets the rate aside and fixes a rate which it judges to be just and reasonable, according to circumstances, can that rate be assailed in this court of commerce as being beyond your jurisdiction on the ground that it was unreasonable, unjust, or unjustly discriminatory?

Mr. KNAPP. I think not.

Mr. STEVENS. So that the whole question of considering the questions of unreasonableness, injustice, or unjustly discriminatory rates lies with your commission?

Mr. KNAPP. I think that is exactly what the paragraph means to say, as put in this memorandum. If the commission makes an order involving the exercise of judgment and discretion, that order is not open to review by the courts unless the commission has proceeded without authority or has invaded constitutional rights—they don't say it in that explicit fashion, but I don't see how any other inference can be drawn from what they said.

Mr. STEVENS. I don't either. But I wanted to make it clear that the question of unreasonableness or injustice of a rate is not a ground of jurisdictional questioning of the orders of your commission.

Mr. KNAPP. Unless it becomes confiscatory.

Mr. STEVENS. If that be true, what is the necessity of long records or long hearings before a court of commerce in considering your orders? Isn't it a short proposition then?

Mr. KNAPP. It would be, I think, Mr. Stevens.

Mr. STEVENS. That is why I wanted that to appear of record.

Mr. KNAPP. It would be, excepting where the constitutional question is involved.

Mr. TOWNSEND. And that is involved in all of them.

Mr. KNAPP. Oh, no. If it is a mere question of jurisdiction, which amounts to the same thing—the question of whether the commission has correctly interpreted the statute—because the commission must construe the law in applying it, and the correctness of its construction may be questioned, that presents a pure question of law.

Mr. STEVENS. Which does not require any great length of time?

Mr. KNAPP. No; so that the questions involving the meaning of this law, its proper construction and the jurisdiction of the commission, would not require a long time, and could be promptly determined. But when you come to the question of whether the order operates with confiscatory effect, you have a very large question of fact to deal with.

Mr. STEVENS. Now you deal with a question of fact. Do you think that five judges drawn from five circuits as they happen to be located could deal with a question of fact to better advantage than a limited number of judges of equal ability and long experience from the locality itself? Do you not think that the judges from the locality itself could get at the question of fact to better and fairer advantage than those from a distance schooled in a place like Washington?

Mr. KNAPP. But that is a matter of opinion. It might be so in one case and it might not be so in another. There is no sort of objection—the President is not limited in his selection of judges for this court. He may appoint men who are now on the bench, and thereby, of course, create a vacancy in the court where they now serve.

Mr. STEVENS. You realize that if a circuit judge now be taken from his circuit work his place could be immediately filled by the appointment of a district judge to do that same work?

Mr. KNAPP. I suppose that is the case.

Mr. STEVENS. Certainly, and we have a superfluity of district judges and many of them do not do enough work to hardly earn their salt. We realize that.

Mr. KNAPP. I do not realize that; I don't know about it.

Mr. STEVENS. I can tell you that that is the fact.

Mr. KNAPP. It is not true in the districts with which I have some familiarity.

Mr. STEVENS. I can tell you that there are a great many districts—

Mr. KNAPP. Perhaps we misunderstand each other. I rather assumed that in many of the districts, so far as the work of the district court is concerned, it would not occupy all the time of the district judge, and that the district judge finds his principal work in the fact that he holds a circuit court.

Mr. STEVENS. Now, the circuit and district work in a great many of the districts of the United States does not require a considerable part of the time of the judge of that circuit, and I can name a great many of them, if it was necessary, and quite a number in our section.

Mr. KNAPP. I was not aware of that.

Mr. STEVENS. In a section such as the Dakotas, and in districts like Wyoming, and the small districts like that, their judges are assigned to other circuits, as a matter of course. It has been done a great many times, and I will venture that at this moment many of them are so assigned.

Mr. TOWNSEND. One circuit judge assigned another's work?

Mr. STEVENS. No; a district judge assigned to work in another district. Judge Amidon does most of his work in the same circuit, but in a different district.

Mr. KNAPP. The second circuit is composed of the States of Vermont, Connecticut, and New York. The district judge of the district of Vermont probably does more work in New York City than he does in his own State.

Mr. STEVENS. That is the point. We have so many district judges now that the work of the country is fairly well done in the circuit courts by reason of the district judges doing circuit work. Now, what is the reason the circuit judges could not do the work performed by this commission, and obviate the necessity of having an increased



number of circuit judges when we have a superfluity of district judges and their work can be interchanged?

Mr. KNAPP. You are assuming that there are many superfluous judges.

Mr. STEVENS. I think it is the fact.

Mr. KNAPP. I see you have created another one in the district of Maryland.

Mr. STEVENS. We did; and two in Ohio.

Mr. KENNEDY. And we needed them in Ohio.

Mr. STEVENS. We could lend you some.

Mr. KNAPP. I am assuming, and it must be the case, that the federal litigation is rapidly increasing. The commerce clause of the Constitution, as it is interpreted by the courts, is the most tremendously centralizing force in our political system.

Mr. TOWNSEND. There is another provision of section 5 rather in connection with this, which under the new bill provides that the Department of Justice shall have charge of cases which are now prosecuted independently by the commission; and in that section it provides that the Attorney-General, who has charge of the care of those cases, may employ counsel anywhere to assist him. Mr. Cowan was before this committee, or sent a brief, in which he contends very vigorously for the right of the shipper to appear before this court and before the Supreme Court to make arguments and file briefs, insisting that that is a right which is very dear to the shipper. What have you to say as to whether we ought to insert in the law such a provision?

Mr. KNAPP. The commission has not suggested any change in that regard.

Mr. TOWNSEND. I recognize that.

Mr. KNAPP. And I think it may be assumed, because it seems to me to be a necessary inference, that the commission is in favor of this bill, except as it recommends some changes which I have brought to the attention of the committee. The bill, as I understand it, contemplates that the Attorney-General may employ special counsel in cases. It is provided so in terms. Isn't it almost inevitable that the Attorney-General would employ the counsel who had appeared before the commission for the complainant, and the man who had made himself familiar with that case?

Mr. RICHARDSON. But, Judge, this bill forbids the attorney of the commission, who is familiar with the case, from appearing in the court of commerce or the Supreme Court.

Mr. TOWNSEND. Oh, no.

Mr. KNAPP. We are not speaking of the commission's attorney, Mr. Richardson, but the attorney who represents the complainant before the commission. The bill would not prevent the Attorney-General from employing Mr. Cowan in any case in which he had represented the complainant before the commission.

Mr. TOWNSEND. Can you see any objection to a law compelling the Attorney-General to employ any counsel who comes up here with the shipper?

Mr. KNAPP. Yes, I can see objection to a law that compels the Attorney-General to employ counsel and pay them when he don't think it is necessary.

Mr. TOWNSEND. Or permit them to take part in the conduct of cases.

Mr. KNAPP. Looking at that side of it for a moment, would not the court on application be almost certain to allow the parties directly interested to present their views? Suppose this court of commerce or the Supreme Court were hearing a case in which the complainant had been represented before the commission by outside counsel. They want to be heard in that case. The court has got unquestioned power to permit it.

Mr. KENNEDY. They generally do permit parties interested in that way.

Mr. KNAPP. I suppose it is a common practice.

Mr. KENNEDY. I have never known it to be refused unless specially interested.

Mr. KNAPP. And particularly where the Government directly or indirectly is one of the parties to the litigation, and has no direct interest in the decisions. I supposed it was a very common thing to allow the parties who were in interest to appear. You gentlemen can judge as well as I can whether there is any need of amending the law in that regard. You can judge as well as I can whether you should put in the law a provision which in effect compels a court to hear counsel when they don't think there is any need of it, and do not want to.

Mr. TOWNSEND. That is the way I look at it.

Mr. KNAPP. To compel a court to listen to any lawyer who comes there and says "I want to be heard in the interest of So-and-so."

Mr. TOWNSEND. I presume no Attorney-General would take the chance of turning down a man who has successfully conducted a case.

Mr. KNAPP. As I said, we have to trust somebody. You can not fix it all by the statute, so that nobody is going to have any judgment or discretion. You must trust somebody.

Mr. STEVENS. I have a question that has not yet been raised, and is not in the bill. In section 1 of the original interstate-commerce act, which I hand to you, there is the proviso which I read. [Reads.]

*Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.*

Mr. KNAPP. I should be glad to see that eliminated from the law.

Mr. STEVENS. Do you think there would be any danger to the law in doing that?

Mr. KNAPP. Absolutely none.

Mr. STEVENS. Do you think it would be of some assistance to the commission and courts in determining questions of interstate character?

Mr. KNAPP. Very likely of some assistance to the commission. To take it out would remove a limitation which might otherwise be claimed to be binding on the courts themselves.

Mr. STEVENS. Questions like demurrage, switching charges, and so forth?

Mr. KNAPP. Oh, yes; and whether the railroad is engaged in interstate commerce, etc.

Mr. KENNEDY. It is an instrument of interstate commerce whether so engaged at the time or not.

Mr. KNAPP. I should like to see it go out very much.

Mr. STAFFORD. On the question of compelling the railroads to furnish a through rate upon application of a shipper, I would like to ask whether there is any necessity, if we establish that requirement, of compelling the railroads to file their tariffs with their respective station agents along the line?

Mr. KNAPP. They have to do it now.

Mr. STAFFORD. It was represented here by the general counsel of the Rock Island system that if we make it mandatory upon the railroads to furnish the rate in advance there is no necessity of compelling them to post the tariffs at the respective stations.

Mr. KNAPP. I can not agree with that at all. The shipper should be at liberty to rely upon the posted tariff and not have to ask an agent.

Mr. STAFFORD. And not upon the ipse dixit rate furnished the shipper. Then, again, it was claimed by one of the witnesses that the same requirement, of furnishing a rate from railroad carriers, should be extended to express companies; that there is difficulty by the shippers generally in obtaining rates from express companies, and that they do not know in advance what a rate may be to some point on a line other than their own. Have you any comments to make upon that subject?

Mr. KNAPP. I see no objection to that.

Mr. STAFFORD. Though it may not be included in either of these bills, I would like to ask whether the commission has passed upon the reasonableness of express charges by express companies in cases brought before it?

Mr. KNAPP. Oh, in a number of cases.

Mr. STAFFORD. Does the commission in those cases pass upon the reasonableness, and if the rate is found to be unreasonable, order in effect a lower rate?

Mr. KNAPP. It has done so in a number of cases.

Mr. STAFFORD. Have there been many petitions brought to the attention of the commission charging that the express charges were unreasonable and exorbitant?

Mr. KNAPP. If you mean by that specific instances, I should say not relatively large. There is a more or less feeling throughout the country, as disclosed by letters that we get and by what we read in newspapers, and in other ways, that express rates generally are very high.

Mr. STAFFORD. Has there been since your service on the commission, or from your acquaintance with this subject, any general reduction in the rates charged by express companies?

Mr. KNAPP. I am not able to say. It is only under the Hepburn law that we have jurisdiction of express rates. I have been told that when we took up this matter of tariffs, which the express companies should file and post when we thought it was necessary to have some different regulations in respect to the express tariffs than those which apply to railroad tariffs, there was a pretty general revision of the express tariffs; and I have been told that that worked out a great many reductions, particularly where a package moved over the routes of more than one express company.

Mr. STAFFORD. It has been testified to here that the express companies are becoming fewer, and that certain ones are absorbing the

former companies. My attention was directed to the first case decided by the commission back in 1887, that at that time the proportion of charges that the railroads received for their share of this traffic was 40 per cent. But in the hearings that have been held on these bills it seems that the ratio has increased until the general percentage is 55 per cent. Can you say what is the reason why the railroads are exacting a larger percentage of gross receipts of the express companies than when there was more competition back in 1887?

Mr. KNAPP. I can not; I didn't know that it was a fact. I did not know what change had taken place in twenty or twenty-five years between the share which the railroad gets out of the express business then and now. I have never had any occasion to look into it. I knew in a general way that it averages at about 55 per cent now.

Mr. STAFFORD. In the decision by Commissioner Walker at that time, in 1887, he stated that the average percentage was 40 per cent, and I assume that he had some data on which to found that.

Mr. KNAPP. But I can understand that this business has developed. When it was small the express companies had to have 60 per cent of it in order to warrant maintaining express service, but as the country grew and business multiplied the railroads received larger proportions.

Mr. STAFFORD. Some members of the committee who are not present wished to interrogate you about the long and short haul clause, to ascertain definitely just what position you take in regard to it, your reference to Judge Adamson's question creating somewhat of a doubt. As I understand you, you are not favorable to the provision carried in the Mann bill compelling the railroad carriers not to charge more for the short haul than the long haul; and you believe that by reason of the geographical conditions that there must necessarily be some differentials charged, and that the commission should have some discretion in determining what the minimum rate should be.

Mr. KNAPP. The commission would not favor a hard and fast rule. It would not prohibit in every case a higher charge for the shorter distance; but, on the other hand, the situation we are in now is this: If the unusual conditions at the longer distance point are still there, then the fourth section does not apply at all; so that the fourth section is practically a dead letter.

Mr. STAFFORD. What change would you make in export rates in contradistinction to import rates? I do not know whether you brought that out. I followed you very closely as to your views on import but not on export traffic. I believe you said they could be distinguished.

Mr. KNAPP. That is an economic question, of course, and goes to a question of public policy. I have only that opinion which a fairly intelligent man might be supposed to have. It does not involve any question relating to the present law or any law that is now pending; but I mean this: We have a country of great extent, of limitless resources, with a most energetic and enterprising people; we have highly organized and efficient machinery for production, which means, or ought to mean, I think, that for some time to come we should produce more in the United States than will be consumed in the United States, and it is to our interest, therefore, to reach the markets in foreign countries. So I have less difficulty in assenting to a low rate on export as compared with the domestic rate to the same port

than I have to a very low import rate as compared with the domestic rate from the same port.

Mr. KENNEDY. It would not do any harm, Judge, if the commission were clothed with the discretionary power to fix even a minimum rate on exports. They would not exercise that discretion to hurt our people, would they?

Mr. KNAPP. They would not mean to do so.

Mr. KENNEDY. I have thought that to prevent the putting on of an export duty at a time like the present would prevent the taking of considerable foodstuffs abroad, and that might be in the line of the best public interest.

Mr. STAFFORD. Is there any provision preventing an export duty?

Mr. KNAPP. I think not. I think the only prohibition is on the States?

Mr. TOWNSEND. To my knowledge, most of the intelligent modern nations encourage exports to their utmost ability instead of trying to discourage them.

Mr. KNAPP. Yes; the German Government has gone to surprising lengths, owning or controlling railroads, in making rates on export traffic there very low, very low, in comparison with their domestic rates.

Mr. TOWNSEND. And France does the same thing.

Mr. KNAPP. Yes.

Mr. TOWNSEND. And Belgium.

Mr. KNAPP. Yes; but Germany is the most notable example.

Mr. TOWNSEND. So that instead of putting any possible restriction on the increase of foreign trade with other competing nations, they try to increase it in every possible way?

Mr. KNAPP. Yes. You have expressed better than I did my thought as to its economic effect and the public policy involved as between the export and import situation.

The CHAIRMAN. And the favoritism shown by those foreign countries is shown toward exports?

Mr. KNAPP. Exports.

Mr. RICHARDSON. I was anxious before the latter part of the examination to which you were subjected to ask you some questions in connection with the proposed commerce court—not the composition of it or the mode and manner of its formation. Please omit all that. I want to ask you about the necessity of a commerce court, so far as the public good and the full and complete beneficial effects are concerned, or in connection with rates and regulations relating to the transportation laws of the country. That is the line I want to talk to you on.

Mr. KNAPP. Well, Mr. Richardson—

Mr. RICHARDSON. You have given your opinion very freely about the different features of this commerce court, and I know you will give it to me on that subject. That is the guide to the whole thing, whether or not the necessity exists for this court, elaborate as it is in its provisions. Now, in the first place, I call your attention to this [reading from the administration bill]:

And such Assistant Attorney-General and attorneys shall have charge, under the Attorney-General's supervision and control, of the interests of the Government in all cases and proceedings in the court of commerce and in the Supreme Court of the United States upon appeal from the court of commerce. The Interstate Commerce Commission and its attorneys shall take no part in the conduct of any such litigation.

That is the attorney of the Interstate Commerce Commission according to this bill. Is he not a trained man in his profession at law, competent and qualified? I take that for granted. Is there any reason or good reason for keeping him, with his knowledge and experience, familiar with a case that comes from the Interstate Commerce Commission to the court of appeals or the Supreme Court, from appearing in that court and giving the court the advantage of his knowledge and information? I call your attention to that one feature of the law singly and independently.

Mr. KNAPP. Well, the appeal in that respect is framed on the theory that when the commission has concluded its investigations of a given case or complaint and has made an order its function is ended.

Mr. RICHARDSON. I understand that about the commission, and—

Mr. KNAPP. And it is not, therefore, for the commission to go into court and defend its own action.

Mr. RICHARDSON. My dear sir, I did not dream of that.

Mr. KNAPP. I said that is the theory of this bill.

Mr. RICHARDSON. I excluded the commission from it. I do not think the commission ought to do that; but is there any reason, as a matter of propriety, why the attorney who studied the case for the Interstate Commerce Commission should be prohibited from going before the court of commerce or the Supreme Court to aid and help other attorneys or the Attorney-General in a proper communication of the facts bearing on that case?

Mr. KNAPP. Personally, I see no objection to that.

Mr. RICHARDSON. Would you not think it very advisable for such a man to be there?

Mr. KNAPP. That might be so, too.

Mr. RICHARDSON. According to what you have been expressing about trained judges this morning, that man is competent and qualified?

Mr. KNAPP. Speaking for myself, I would prefer to see that sentence stricken out of the bill, so that the Attorney-General would be at liberty, if he desired or thought best to do so, to have associated with him, either before the court of commerce or in the Supreme Court, an attorney of the commission.

Mr. RICHARDSON. From your observation, is it not a fact that in the States where district attorneys prosecute cases, or have charge of them, and they are carried to the supreme court of the State, the attorney-general not only welcomes but invites that district attorney to come up to the supreme court and help him?

Mr. KNAPP. I do not know what the practice is.

Mr. RICHARDSON. But that is good common sense?

Mr. KNAPP. In the State with which I am familiar the district attorney takes it up, as a matter of course.

Mr. RICHARDSON. Now, in describing and indicating the subject-matter of jurisdiction of this commerce court this revised and reformed bill of "the administration" says this (reading from the bill):

But nothing herein contained shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof which is hereby transferred to and vested in the court of commerce.

Now, as I understand that, this court of commerce exercises alone the jurisdiction that the circuit courts now have over the orders and proceedings of the Interstate Commerce Commission?

Mr. KNAPP. Yes.

Mr. RICHARDSON. Then wherein and how can there be such great benefit in the court of commerce, so far as public interests are concerned, when that court is clothed with exactly the same jurisdiction that the circuit judges now exercise over the Interstate Commerce Commission orders?

Mr. KNAPP. Expedition and uniformity.

Mr. RICHARDSON. Expedition is all it means, then, virtually?

Mr. KNAPP. No; uniformity. We have already had the experience of one circuit court construing a law one way and another circuit court construing it another way, and we do not know what it is until the Supreme Court decides that question.

Mr. RICHARDSON. Well, you are going to get several men, a set of judges, that will confer with each other, and the jurisdiction of other judges is, of course, excluded, and you get uniformity of decision and expedition. Is that all? Supreme Court makes uniformity of decisions.

Mr. KNAPP. Yes, sir. You get another thing. I will put it this way: The laws which fix the political rights of the citizen may be different in different States, without any great trouble, and perhaps to advantage; as, for example, when a man becomes of age, the qualifications of a voter, whether offices shall be filled by appointment or election; generally speaking, all those laws which fix the political rights and relations of the citizen may be different in different States, without objection and perhaps to advantage. So, too, the laws relating to property, to contract relations, and the devolution of property upon death, may be different in different States, without great difficulty and perhaps to advantage; as, for instance, rates of interest and a thousand and one things. But when you come into this court of commerce the state line disappears and the individual interest, which is always paramount in ordinary litigation, disappears. It is a question not only of public interest, but of unlimited public interest. It is in every sense a national question. That is my fundamental reason for favoring a national court to pass upon it.

Mr. RICHARDSON. As I understand it, this commerce court has a right to meet anywhere outside of Washington, according to the interests of the public?

Mr. KNAPP. Yes, sir; it might sit in New Orleans or San Francisco, or—

Mr. RICHARDSON. Suppose this commerce court were to meet in the State of Massachusetts; it would adopt or be governed by the same practice and rules governing the circuit courts of the United States holding their sessions in different States; that is, the circuit court complies with the laws of the State, as nearly as it can, not incompatible with the statutes of the United States?

Mr. KNAPP. I believe that is the rule.

Mr. RICHARDSON. That same rule would be applied to this court of commerce if it should hold one of its sessions in the State of Massachusetts or any other State in the Union.

Mr. KNAPP. Assuming that that is so.

Mr. RICHARDSON. Then, all that we can get out of this creation of different attorneys and assistant attorneys, so far as the public good is concerned, is the uniformity of law and expedition?

Mr. KNAPP. Yes; and you avoid putting a great burden upon federal courts, which, in some instances, I know they regard as intolerable.

The CHAIRMAN. The committee is very much obliged to you.

**STATEMENT OF HON. EDWARD L. TAYLOR, JR., A REPRESENTATIVE FROM THE STATE OF OHIO.**

Mr. TAYLOR. Mr. Chairman and gentlemen of the committee, I recognize that you are very busy, and if I did not think that the seemingly little matter about which I appear before you was important, indeed, for your consideration, I would not, of course, take up your time.

I have introduced House bill No. 3084. It is simply an amendment; in fact, there is one word, possibly two words, changed in paragraph 4 of section 1 of the rate bill. The word proposed is on the third page, line 17—

The CHAIRMAN. What is the word?

Mr. TAYLOR. The word is "died." It is changing the paragraph of the rate bill as amended last year.

Mr. ADAMSON. Which paragraph?

Mr. TAYLOR. Paragraph 4 of section 1, the paragraph affecting free transportation, and changing the language as amended last year to not only include families of employees "killed" in the service, but families of employees who "died" in the service.

When the bill was first passed that was entirely overlooked. For many years the railroad companies—and I know this from men prominent in railroad circles—had always made it a custom, in proper and meritorious cases where an old and faithful employee had died to extend the pass privilege to his family.

Mr. BARTLETT. Indefinitely?

Mr. TAYLOR. Whenever they felt like it. There is, of course, nothing that compels them to do it. But in meritorious cases and when the railroad desired to extend the privilege and the families wanted to get it. At present this is prevented by law and is made a criminal act.

Mr. BARTLETT. You misunderstood my question. Do you mean at any time?

Mr. TAYLOR. Oh, yes; at any time that they wanted it. Of course, at that time there was no restriction upon passes at all; they got as many as they wanted.

The first time the matter was called to my attention was just after Congress adjourned and the Hepburn bill had become a law. Mr. R. E. McCarty, general superintendent of the Pennsylvania Railroad lines, with headquarters at Columbus, Ohio, my home city, came to me very much worried about what he claimed was a thing affecting the esprit de corps of his immediate organization. He said that he found himself face to face with a number of requests of people who stood very high among the membership of the various railroad orders and who had formerly received transportation because they were



widows or children of men who had been of long service with the railroad; but he found himself unable to accommodate them, and there was therefore some feeling being engendered. I investigated that matter and found that it was true, and quite a number of men, various trainmen of the various orders, called upon me at my office, assuring me that both the company and the employees felt that this sentimental courtesy should be continued, and that it should not be stopped.

The CHAIRMAN. The language of the present act is "also the families of persons killed."

Mr. TAYLOR. I change it to "died."

The CHAIRMAN. Now, what is the change you propose?

Mr. TAYLOR. To take out the word "killed" and put in the word "died," so that it will include the families of employees who died in the service.

The CHAIRMAN. But of course that is not all. You would make it read, "also the families of persons who died while in the service?"

Mr. TAYLOR. That seems to be the language—yes, "who died while in the service."

The CHAIRMAN. Then it is not sufficient to strike out the word "killed" and insert the word "died." You leave in the word "killed?"

Mr. TAYLOR. I didn't leave it in, but I am perfectly willing to put it in.

The CHAIRMAN. It should read, then, "also the families of persons who died," and so forth.

Mr. TAYLOR. A year or two ago, as the result of this agitation, there came from the Senate an amendment, offered by Senator Clapp, and that amendment, instead of using general terms and taking in the families of all deceased employees who died in the service, simply provided that families of employees who were killed in the service might receive the courtesy of a pass, and that is the language the chairman has just read; in other words, it brought in a certain class of families of deceased employees, and not all of them generally. By this language, if I am correct in my language, I seek to simply generalize the families of deceased employees who died in the service and give the companies the right, if they care to extend the pass privilege, to grant such passes.

The CHAIRMAN. Has there been any construction of the law as to the family of a dead person?

Mr. TAYLOR. I would not have any trouble in ascertaining that.

The CHAIRMAN. What would you say was the definition?

Mr. TAYLOR. His wife, his widow, if she survived him, and any children that might survive.

The CHAIRMAN. Until they got to be 80 years of age?

Mr. TAYLOR. It makes no difference if the railroad company cared to extend the privilege under those circumstances. This is not a mandatory rule; we are not forcing something upon the railroads.

The CHAIRMAN. But a child 80 years old would be a member of the family.

Mr. TAYLOR. Yes; I should say he was.

Mr. ADAMSON. Dependent relatives, living in the family.

Mr. TAYLOR. Yes, sir. I would possibly consider my brother a member of my immediate family, if he lived with me and if I were supporting him.

Mr. RICHARDSON. And if he died, his children would become members of the family, and that of course would make it indefinite.

Mr. TAYLOR. I know that it does not, excepting as to the fact that the railroad companies may offer this to the family of a man as a courtesy, but a railroad may say that they will not issue it at all.

Mr. STEVENS. Wasn't it that very thing that the antipass law was enacted for, to stop the courtesy business?

Mr. TAYLOR. No; I don't think so. There were very many serious objections to the antipass law, but I would not attempt to give them in detail. No one ever claimed that it was unwise to give a wife or widow of a deceased employee of a railroad, a man of faithful service and long standing, a pass to ride to and from her home; to go upon Memorial Day to put flowers upon his grave, or something of that kind. And I want to say that there is a deep underlying sentiment among the men that this courtesy ought to be extended, and it is also sought by the managements of the roads.

Mr. STEVENS. You realize that we are enacting a law for the government of a public corporation performing public functions for the benefit of the public; and when we make a general law preventing discrimination as to all classes of the public, in what way should this class of the public have a favor given them, and discriminate against other classes of the public? That is the point that comes to us.

Mr. TAYLOR. It is part and parcel of the railroad man's every day life, and that which he appreciates and expects during his life, or during the term of his employment, to receive from the railroad company for which he is working, for himself and his family, free transportation at certain intervals. That same feeling always remains with the immediate family of that man after he has severed his connection by reason of death. It is because of that feeling that they have a right to a pass if they want to take a trip every once in a while. It has been the custom of years, and the esprit de corps of the railway organization demands it, on the part of the company. It is not the immediate family that is worrying the company, but the men who are still living and working for the company, feeling that the widow or the children of some man that they all knew, and who has died, ought to have this courtesy. As I have stated, it is purely a sentimental consideration and is not a question of logic. I have read this pass amendment, and if you can show me much logic in any of it. I would be very glad indeed to see it.

Mr. KENNEDY. I think your amendment ought to be made; that is, I think if we allow the word "killed" to remain, it follows, to me, that a man who has conducted the service of the company successfully without accident ought to stand higher than a man who is killed. But here is a suggestion that I think ought to be made, or a limitation that ought to be made, so that a son, say, of a railroad man, if he might happen to be a traveling man, could not—

Mr. TOWNSEND. Or a Member of Congress.

Mr. KENNEDY. No; but if he was engaged in commerce, it would be tremendously advantageous if he should have a pass.

Mr. TAYLOR. I do not object to any limitation, but at the same time I did not consider it.

Mr. SMs. It might be made to cover the widow during widowhood, and the children during minority.

Mr. TAYLOR. That would suit me exactly.

Mr. ADAMSON. You spoke of this relieving the officials of embarrassment. Don't you think that it would relieve them of great embarrassment and enable them to reduce passenger fares to the entire public if we were to repeal all of these exceptions to that anti-pass provision?

Mr. TAYLOR. No; I do not agree with you at all upon that.

I am very much obliged to you.

(Thereupon, at 1.10 p. m. the committee adjourned until Monday, February 21, 1910, at 10 o'clock a. m.)

# HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

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PART XXII

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WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1910

**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES.**

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**FREDERICK C. STEVENS, MINNESOTA.**

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**GORDON RUSSELL, TEXAS.**

**THETUS W. SIMS, TENNESSEE.**

**ANDREW J. PETERS, MASSACHUSETTS.**

## BILLS AFFECTING INTERSTATE COMMERCE.

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Monday, February 21, 1910.*

The committee this day met at 10 a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. There may be introduced into the record a letter from Mr. S. H. Cowan, representing the Cattle Raisers' Association of Texas.

(Following is the letter referred to:)

[Cattle Raisers' Association of Texas.]

FORT WORTH, TEX., *February 17, 1910.*

HON. JAMES R. MANN,  
*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

DEAR SIR: I hesitate to further tax your time and patience, but at the risk of doing so write these suggestions to each member of your committee, because I feel that no member of the committee desires to do anything which will work, or may work, injustice to shippers or railroads.

That part of the Townsend bill which declares that "the Interstate Commerce Commission and its attorneys shall take no part in the conduct of any such litigation" will probably work so unjustly in the cattle rate case which I cited in my argument filed with the committee, and probably in other cases, that I feel it my duty to point it out. That case is pending before the master in chancery at St. Louis; the evidence, briefs, and arguments are all in; and it is expected that he will make a report to the United States circuit court any time.

I am acting as special attorney, employed by the commission in the case and under appointment of the Attorney-General, and Mr. P. J. Farrell, an attorney regularly in the employ of the commission, is with me in the case, and he likewise has an appointment from the Attorney-General. I have spent more than a full year's time altogether on the case before the commission and the court. It covers a great field of detail, and can not be decided properly without considering the facts in detail. It is not egotism to say that no other lawyer knows the case, nor is it a criticism to say that no other lawyer can familiarize himself with it so as to properly handle it in less than three months. If you doubt that, please send for Mr. Farrell, who is in the commission's office, and get him to tell you about it. Now, when the master makes his report the case will come on for a hearing on objections to the master's report before at least three of the circuit judges holding the circuit court.

Suppose this bill becomes a law during the pendency of the case. This clause to which I object, it seems to me, prohibits the Attorney-General from employing either one of us as special attorney in the case, and probably prevents either of us from appearing. The Attorney-General must construe it to be the policy of the law to prohibit him from employing any attorney who has represented the commission in the case. The Cattle Shippers and the Cattle Raisers'

Association, complainant, which has spent many thousands of dollars in the case before the commission, have no right to appear by counsel and thus, right in the middle of this important case, involving already, according to the allegation of the railroads, \$2,000,000, and as a precedent involving ultimately five times that amount—as I can fairly demonstrate—it is proposed in this bill to exclude me and my clients from this case. In the name of even-handed justice for the shippers of this country and as well for the bar, I want to register this protest against that which, as I interpret it, would prohibit my going on with the case in the circuit court or the Supreme Court, and prohibit attorneys of the Interstate Commerce Commission familiar with a given case from being retained or to appear. And I wish in the same behalf to enter the earnest plea that the shippers who were complainants before the commission shall have the right to appear by counsel in any court in any case where the order of the commission is attacked, in support of the order, under such rules as the court may prescribe.

I know a certain case where certain parties having rights, as they conceive, by contract will attempt to enjoin the railroads from obeying the commission's order if made. I know of other shippers equally interested on the other side. Shall they not be accorded the right to be represented? There can be no fear that such appearance will prevent the Attorney-General having control of the case, as the court can prescribe the rules to suit the case, as its conduct is necessary; but the bill can be made to read that the Attorney-General shall have control and direct the case, and that will meet the objection that he would be interfered with.

I notice the expression by some of the committee in report of hearings that they can not conceive that in such a case as the cattle-rate case the Attorney-General would not retain the counsel familiar with it. Why, then, should the bill expressly exclude the commission's attorneys? After having provided in the bill that the Attorney-General shall have charge and control, what effect can the clause to which I object have unless that which I have pointed out?

I trust you will not consider what I now say, or have said, a criticism of the authors of the bill or of the Attorney-General's department. There is no man in Congress for whom I have a higher regard, or who to my knowledge has worked more faithfully or intelligently for the best interests of the public than Mr. Townsend, nor do I question that those concerned in drawing the bill are less faithful to the public trust, but it does seem to me that there has been no sufficient, comprehensive, accurate, and detailed survey of the results to flow from it in practical operation, and as it will apply to the real parties at interest.

I realize that my opposition to it might afford the occasion for the Attorney-General to decline to continue my service in that case if the bill becomes a law while it is pending, even if the clause to which I here object were eliminated, but the interests of my clients and those similarly situated as the cattle shippers are as great in this case as that of the railroads, and I can not, in duty to my clients, sit quietly by and not protest against so manifest injustice as would result from an act of Congress retiring their counsel while the railroad's counsel continue in the case to the end. I am certain that no member of the committee intends such consequence.

While I believe that the Government should pay for defending the commission's orders, I believe that throughout the country those who have taken the burden of presenting their cases to the commission desire the right, to be exercised wherever they think it to be to their interest, to be heard when the final test comes in court as to whether they shall have and enjoy the fruits of their victory, the benefits flowing from the orders made in their behalf.

Should the Interstate Commerce Commission under the existing law, or the Attorney-General under this bill if enacted, not see fit to employ such counsel as had successfully handled a case before the commission, or deem it unnecessary to employ special counsel at all, as would generally be the case, the complainant should still have the same right to fight for his rights before the courts to the same extent as he did before the commission, subject to the case being in control of the Attorney-General. It would be availed of only in cases of great importance, and I can not see why it should be objected to if the Attorney-General is left in control of the case. The failure to provide for it would be an undue preference for the railroads.

Respectfully submitted.

S. H. COWAN.

Also a letter from Mr. Edward F. Murray, of Murray's Line, Albany, N. Y., in relation to water-line carriers.

Following is the letter referred to:

MURRAY'S LINE,  
Troy, N. Y., February 19, 1910.

*To the honorable the Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D. C.*

GENTLEMEN: On looking over H. R. bill 17536 my attention is attracted to lines 24 and 25, page 18, and lines 1 to 7, inclusive, page 19, which read as follows:

"And in establishing such through route, the commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini and would form part of such through route, unless the route by way of such last-described line of railroad is unreasonably long as compared with such proposed through route."

If the intent of the paragraph is, as I read it, to restrict the operation of the proposed amendment to nothing less than substantially the entire length of a railroad, there will be, in my mind, but little use in passing the proposed amendments to the law, or spending much money in improving the waterways of this country.

As an illustration: The Illinois Central Railway substantially parallels the Mississippi River from St. Louis to New Orleans, and between those points are the following—and many other prominent places, located both on the railroad and the river—namely, Cairo, Memphis, Vicksburg, Natchez, Baton Rouge, etc.

If the proposed amendment is as it appears to me, the court of commerce could not compel the railroad company to make through or joint rates or proper divisions of same between any of these points and points beyond and the water lines, one terminus being New Orleans, but I do not know what the other terminus would be in this case.

Another illustration in this vicinity: The New York Central Railroad owns and operates a through line between New York City and Ogdensburg, N. Y., going through Vermont via Rutland, Burlington, etc., which brings it under the jurisdiction of the Interstate Commerce Commission. On the line of the road and competitive with water transportation are the cities of Newburgh, Poughkeepsie, Kingston, Hudson, Albany, Troy, Burlington, etc.

If I understand the proposed amendment correctly, the court of commerce would have no right to order the New York Central Railroad to put in effect through or joint rates, with proper divisions of same, between any of these places and the places on their roads or connections, and the water lines operating on the Hudson River and Lake Champlain, and they would virtually have no competition from water lines, except on port-to-port business.

I believe substantially the same conditions exist in hundreds of other places in this country.

If the proposed amendments are to be of any benefit to the business interests of this country or to assist in the development of our waterways, I believe that it is necessary that there should be some power or authority to compel the railroads of this country to put in force joint and through rates, with proper pro rata divisions of same, to apply between all stations with water transportation carriers.

Railroads should not be permitted to charge carriers by water any more for carrying the same classes of freight the same distance than they charge their most favored connection or patron. And if it can be legally and equitably provided, where water transportation and railroads come together, and there are no proper transfer facilities between them and the business will warrant it, there should be some power or authority to compel that proper transfer facilities be erected and a charge made to the property transferred that will fairly reimburse the parties or party who builds the transfer accommodations.

As I said to your committee, it is to my mind almost useless for the United States Government to spend hundreds of millions of dollars in improving the waterways of this country if there is not some power or authority to compel the railroads to join in through or joint rates and fair divisions of same at all points where water and rail connections are or can be made.

It is not possible, except between very few places in this country, to maintain all-water routes with proper facilities with port-to-port business only.



The railroads should act as feeders and distributors to the water carriers, and vice versa, thereby giving to the manufacturing and business interests of this country the benefit of the lowest rates that can be made to and from all points.

If I can be of any use to your committee, I am at your service, and will appear before your committee at any time that will suit your convenience. I believe that this question in all its bearings is one of the most important that has been before Congress in many years.

Thanking you for your consideration, I am,

Respectfully, yours,

EDW. F. MURRAY.

Also a letter from Mr. R. C. Adams, addressed to Representative Martin, of South Dakota, in relation to oil pipe lines, and so forth, as related to the proposed legislation.

Following is the letter referred to:

WASHINGTON, D. C., December 20, 1909.

Hon. E. W. MARTIN,

*House of Representatives, City:*

SIR: I recently noticed in the Associated Press report a synopsis of the recommendations the President and the Department of Justice have agreed upon with reference to requesting legislation by Congress creating a court to which appeals could be taken from the decisions rendered by the Interstate Commerce Commission. It was also stated that special legislation would be requested which would give the commission a broader and more definite scope of authority in handling matters pertaining to interstate commerce and the regulation of freight-rate schedules proposed to be adopted by the railroads of the country.

This proposed action is very good so far as it goes, but it occurs to me as a producer of oils that two very important matters have been overlooked by the President and the Department of Justice, namely:

(1) The Interstate Commerce Commission should be given power to compel all railroads to furnish tank cars for the transportation of both crude and refined oils and the right to regulate the rate to be charged for such transportation.

(2) The proposed laws should declare all pipe lines used for transporting oil (crude or refined) to be common carriers in the same sense and for the same reason that railroads are made so.

Both of these propositions should be placed under the jurisdiction of the Interstate Commerce Commission for the same reason that railroad rates are, and the commission should be given power to regulate the rate to be charged for transporting oils by the pipe lines as well as the railroads.

Objection might be raised to the suggestion that the railroads be compelled to furnish tank cars for transporting crude or refined oils, on the ground that those engaged in the business of producing and refining oils have heretofore provided their own tank cars or pipe lines owning the same.

In a measure this is true, but it is well known that these cars are the property of the Standard Oil Company, or some of its subsidiary companies, and that this company has practically controlled the oil markets of this and many foreign countries and, by controlling the means of transportation, has to this time successfully prevented independent companies and individuals from operating to any considerable extent.

As to the question of regulating the rates on pipe lines and making them common carriers, it is well known that the producing of crude oils and refining the same is to-day one of the largest, if not actually the largest, industry of the United States; that more people are interested, either directly or indirectly, in the producing and refining of oil than in any other industry in this country; and proper means of transportation should be furnished for transporting oils of all kinds, the same as for other commodities. There are at this time pipe lines running through many of the Middle and Eastern States supposedly owned by different companies, but none have ever been known to do a common-carrier business. What is known as the "Mid-Continent oil fields," comprising middle, west, and south, is crossed at present by three pipe lines—one supposed to be owned by the Prairie Oil and Gas Company, running through Oklahoma and Kansas in a northeasterly direction and connecting with the Standard's eastern lines; one by the Texas Pipe Line Company, crossing Oklahoma and Texas, reaching the Gulf of Mexico by way of Port Arthur; one by the Gulf Pipe Line Company, crossing Oklahoma and Texas through the Beaumont fields to the Gulf. A fourth line has been incorporated under the laws of Oklahoma as a

common carrier. This is known as the Oklahoma Pipe Line Company and is owned by the Standard Oil interest. This line will cross Oklahoma, Arkansas, and Louisiana, reaching the Gulf of Mexico at Baton Rouge. These three lines all reach tide water at the Gulf, and from there the oil goes to various parts of this country and to foreign countries by the cheap water transportation.

The well-known fact that 60 per cent of the oil produced in the United States goes to foreign countries every year explains the reason why the pipe lines in every instance go to tide water.

So far as the common-carrier principle is concerned, the arrangement at present is a mere mockery. The several States do not have uniform legislation affecting the transportation question, and hence it is impossible for an independent company or individuals who produce oil to force the pipe lines to transport their products from one State to another, and unless the railroads are compelled to furnish proper tank cars for the transportation of oil, both crude and refined, it will be utterly impossible in the future as in the past for any independent producer to reach any of the markets of the United States with his oils or get them to tide water where they can be distributed by boat.

At present, and it has always been so, the independent producer by reason of this fact is either compelled to quit producing oil and go out of business or sell to the pipe-line interests, and hundreds of thousands of people to-day stand face to face with this question—the value of their product being just what the pipe lines (Standard Oil) are willing to pay for it.

There is but one relief, and that is for Congress to declare pipe lines to be common carriers in every sense of the word; compel the railroads to furnish tank cars for transporting crude oil and all its products, and provide a heavy penalty (both civil and criminal) for every violation of the law, and give the Interstate Commerce Commission power to make rates and regulate the business generally in so far as it relates to the transportation question.

I have been engaged in the business of producing oil for a number of years past in the mid-continent field; but have never yet been able to find a market for my products except such as the Standard Oil interests have voluntarily offered to give me, and to-day they are purchasing oil from me at 35 cents per barrel, which, it is well known, nets them in the refined state from \$10 to \$14 per barrel.

I can see no reason why Congress should allow the oil industry to pass unnoticed while the Department of Justice is exerting every effort to dissolve the Oil trust, which has openly boasted time and again that its system of doing business is more efficient than that of the Government itself.

The statistics furnished by the Government show that this industry has been constantly increasing since the civil war to the present time, and it is not surpassed by any other in the United States to-day. It is also a well-known fact that not more than half a dozen of the Eastern States have been fully developed with reference to the production of their oils. I may say the industry is to-day yet in its infancy, and when we stop to consider test drilling made in the States of South Dakota, southern Montana, Wyoming, Utah, Colorado, Nevada, and California have demonstrated conclusively that oil abounds in great quantities it becomes very plain to any observing person that these questions relating to the methods of transportation should be settled for all time to come as soon as possible. It is impossible at present for the owners of properties in the States I have just mentioned to operate the same or find a market for any of their products, yet it is a little strange that people residing in those States engaged in other lines of business, live stock or mining, find it possible to get their products transported to any part of the country, while the owners of oil properties enjoy no such transportation facilities. If Congress should enact the legislation proposed herein, it would be possible for the owners of properties in these several States to develop their properties, produce the oil, and reach the markets of their own and adjoining States, whereas at present they can not do this for lack of transportation facilities, and the people of these States are forced to use oil and pay transportation charges covering the same shipped from the Atlantic coast and the Gulf of Mexico.

There is no reason why the oil industry in one State should be allowed to remain in an undeveloped condition while the oil regions of some of the other States are being overtaxed and their product fast diminishing, in order to get oil to supply the people of the States with the same, when these people have enough oil within the borders of their own State to meet all demands. The industry and legislation affecting the same should be such that it would be possible for the owners of oil-producing properties, adjacent to any railroad, to

develop the same and know that their products would be transported to various points of market by the railroads the same as any other commodity produced in that locality.

I am writing this letter to you trusting that it contains information with reference to this subject with which you have not heretofore been familiar, and hoping that you may be able to bring about the enactment of some legislation that will cover the ground fully and give the investing public the positive protection to which it is entitled.

Yours, very truly,

R. C. ADAMS,  
*Bond Building.*

Also a letter from Mr. Leonard Bronson, manager of the National Lumber Manufacturers' Association, in relation to certain amendments proposed by him upon the subject of car stakes.

Following is the letter referred to:

[The National Lumber Manufacturers' Association.]

CHICAGO, ILL., *February 18, 1910.*

HON. JAMES R. MANN,

*House of Representatives, Washington, D. C.*

DEAR SIR: Please allow me briefly to remind you of a matter of interest to the people I represent, and which was the subject of the hearing before the Committee on Interstate and Foreign Commerce of the House of Representatives on January 26 and 27.

The lumbermen do not feel that they are selfish in asking that when amendment of the interstate-commerce law is reported it be so worded as to require complete equipment of flat or gondola cars for the carriage of their products, because, as they believe, every other commodity of anything like equal importance with theirs from the transportation standpoint is given equipment especially designed to its needs.

As I stated during the hearing, I am not a lawyer, and so may make suggestions that are not entirely apropos nor readily put into words, but it seems to me that a fair and comprehensive inclusion of this matter in the law might be accomplished in substantially the following way:

In section 1 of the act as it stands to-day, in the second paragraph, is a definition of the term "transportation," reading: "The term 'transportation' shall include cars and other vehicles and all instrumentalities of shipment or carriage," etc. If you should insert after the word "cars," or after the word "vehicles," the words "completely equipped for the safe carriage and protection of all commodities ordinarily transported in carload lots," it would, I think, substantially cover the point at issue and be fair to all classes of shippers. The exact wording to cover the purpose and thought I have is very gladly left to you.

You are aware of our feeling that the railroads can well afford to furnish car stakes, binders, etc., in view of the fact that by their use they are able to transport a larger load on a cheaper car than where a box car is used.

It would seem to the layman, in view of the verblage that follows the part I quoted above, that this broadening of the definition of the term "transportation" should be unnecessary. Seemingly, it would be covered by the words "all services in connection with the receipt, delivery," etc., yet the Interstate Commerce Commission has not seen fit so to interpret these words or to apply such an interpretation, and, therefore, I believe it is necessary that this interpretation, if it be sound, be written into the law.

I do not know whether such an addition as I suggest should absolutely require the railroads to furnish the equipment or whether they could simply pay for the equipment if furnished by someone else. The latter, if permitted, would undoubtedly be the way in which the matter would be handled at first, though I am sure that after the railroads had equipped a few hundred thousand flat and gondola cars with temporary stakes and binders they would soon devise some permanent arrangement, and be glad to do so; but perhaps it would be necessary to cover this point in the law—perhaps in the sections defining the duties of the Interstate Commerce Commission. If the railroads have the option of furnishing the equipment or paying for it, and choose the latter, the charge allowed should be absolutely fixed by the Interstate Commerce Commission, either by an allowance in the rate per 100 pounds or by a fixed allowance on each carload. Some lumbermen think that reduction of 1 to 1½ cents per

100 pounds in the rate on forest products shipped on open cars would be a satisfactory way of settling the matter. I do not agree with that view, but am willing to leave it to the wisdom of the Interstate Commerce Commission, the only point on which I am insistent being that the rate or allowance, or whatever it may be called, be fixed and published by the Interstate Commerce Commission as its investigations may determine to be just.

If you can again call this matter to the attention of the committee and secure the incorporation of this idea in the committee's reported bill you will be doing a service to several of the leading industries of the country, and at the same time, I believe, be doing no injustice to the railroads, but simply be placing upon them a duty which is properly theirs. The exact wording and form of the amendment desired I am glad to leave to the wisdom of yourself and the other gentlemen of the committee.

I am writing this letter also to Hon. F. C. Stevens, of the committee.

Very respectfully, yours,

LEONARD BRONSON, *Manager.*

Also, a letter from Mr. George F. Mead, of Boston, Mass., who appeared before the committee in relation to the bill-of-lading bill and propositions pertaining to that subject.

Following is the letter referred to:

[J. D. Mead & Co., produce and commission merchants, members National League of Commission Merchants of the United States.]

BOSTON, MASS., *February 18, 1910.*

Hon. C. G. WASHBURN,

*Washington, D. C.*

DEAR SIR: Referring to House bill 17267, relating to bills of lading, there is one provision which should be changed so far as it relates to order bills of lading. In the amended bill which I left with you when in Washington, you will notice in the proviso to section 4 that order and straight bills of lading bearing the notation "Shipper's load and count" are exempt from the provisions of that section. This would work inestimable hardship upon the shippers of perishable goods, as the railroads would be sure to put this stamp on all bills of lading for perishable commodities, hoping to escape liability in that way. It would be inconsistent enough to put this on "order bills," for when a buyer or bank advances money on an "order B/L" and it becomes for all intents and purposes a negotiable instrument, they have a right to hold the railroad responsible for the number of packages called for in the bill of lading.

I believe you will readily see the fairness of this claim, and I hope you will vote to strike "order bills of lading" out of the proviso in section 4.

I am mailing you to-day a copy of a brief prepared by the car lines committee of our league in support of a separate form of bill of lading for perishable products, and on page 4 of this you will find substantial and, I trust, convincing reasons for our asking that this change be made.

You are so busy with hearings, I presume, it will be some time before you can consider this bill in committee.

Sincerely, yours,

GEO. F. MEAD.

P. S.—Finding that I have but one copy left of the above-mentioned brief, I am mailing this to Mr. Stevens, who introduced the bill and who will no doubt be pleased to furnish same for your information.

Also, a telegram from Mr. Homer A. Stillwell, of the Chicago Association of Commerce, concerning commercial travelers' sample baggage, etc.

Following is the telegram referred to:

CHICAGO, ILL., 15.

HON. JAMES R. MANN,

*House of Representatives,*

*Washington, D. C.:*

The Chicago Association of Commerce most emphatically indorses House bill 16019—the Coudrey bill—providing for legalization of commercial travelers' sample baggage, and strongly urges its enactment into law.

HOMER A. STILLWELL.

**STATEMENT OF HON. JUDSON C. CLEMENTS, MEMBER OF THE  
INTERSTATE COMMERCE COMMISSION.**

**Mr. CLEMENTS.** Mr. Chairman and gentlemen of the committee, the occasion of my coming here last week was at the request of the chairman of the commission, he having been delegated by the commission to speak for it in respect to amendments that were particularly referred to by him, as well as to indicate the views of the commission with respect to the different bills, section by section, as he did last Friday and Saturday. I have nothing to say to the contrary or different from what he said in respect to the several amendments proposed by the commission, forwarded at the request of this committee, together with its views with respect to the different bills and the several provisions in the chairman's bill (H. R. 16312). Our chairman stated the views of the commission in detail, and I do not want to express anything different from them in regard to those features. I therefore deem it wholly unnecessary on my part, from my standpoint, to duplicate what he said or go over that ground in regard to the provisions of these bills.

But there is one suggestion that I would like to make in regard to the court provision, not in any different line from the suggestions made by the chairman of the commission, but he called special attention to what the commission has suggested particularly in regard to a clear definition of the court's jurisdiction, so that no uncertainties may arise as to what shall be the limitations and powers of the commission in regard to the court as regards the question of rates and discriminations. And I am led to do that, particularly because of the experience that was had in attempts to enforce the orders of the commission in the period since the act was originally passed, and more particularly before the passage of the so-called Hepburn Act. The condition was one of uncertainty, particularly in regard to the conflicting decisions of the different courts over the country in regard to the scope of their powers of review. It was exceedingly disappointing to the public in general that there was not a more definite line of demarcation between the powers of the commission and the courts in the orders of the commission, causing the delay incident to the attempt to enforce our orders under the processes then in force in respect to appeals, so that we regarded, since the Supreme Court in recent decisions appears to have put down a clear mark as to the powers of the present circuit courts in reviewing the orders of the commission, and makes clear the authority of the commission as well as the courts, that it would be exceedingly unfortunate to put that matter back again into a state of uncertainty and doubt and conflict which would require another decade of judicial interpretation to clear up again.

**Mr. BARTLETT.** You think, then, that under the Hepburn Act, and under the recent decisions of the Supreme Court, the powers of the commission in enforcing its administrative orders when its jurisdiction is not questioned, or when the question is not alleged to involve the Constitution of the United States, so far as exceeding the power is concerned, is as well instituted now, under the Hepburn Act, as it can be?

Mr. CLEMENTS. If we properly interpret the recent decisions of the Supreme Court, I think it is.

The CHAIRMAN. Permit me to interrupt you just a moment, Mr. Bartlett, and to ask Mr. Clements if he has any formal statement that he would like to make upon these subjects.

Mr. CLEMENTS. I want to refer to the manner in which the judges of the commerce court might be selected.

The proposition in this bill, as I understand it, is, if this court is established, that the judges are to be detailed by the Chief Justice of the Supreme Court, one to serve for a certain period of time, another a different period, and so on; that is, the court is to be made up of assignments or details from the circuit courts by the Chief Justice. It seems to me in the scheme of regulation of a matter so vastly important as that of interstate commerce, affecting every interest in the country and every individual in the country, that a court that is to view these orders with respect to their constitutionality and regularity ought to be a court situated in such a way that its decisions would command the greatest degree of satisfaction and confidence on the part of the whole people—the railroads, the shippers, and the public in general—for, of course, there will be great controversy from time to time in regard to these matters, as there has been in the past, and anything that can be done in the constitution of this court that will contribute to the establishment of a court that would command the fullest possible confidence and respect of all parties, it seems to me, is well worth doing. I do not mean to say that it would not in a reasonable degree accomplish that purpose in the manner constituted, but it seems to me that it is taking it out of the ordinary method of establishing courts, and there are several reasons why the other plan that has been suggested would be better; that is, that it should be constituted of judges appointed under the Constitution in the regular way that other federal courts are constituted. In the first place, it would be an anomaly and it would be a question of wonder why this court was made up in a particular way different from the way in which the Supreme Court, the circuit courts, and the district courts are made up, which are under appointment by the President and confirmed by the Senate. I think it would always be a matter of wonder why this regular constitutional method should have been departed from. Nobody has any greater respect for the Supreme Court and the Chief Justice of the Supreme Court, I think, than I have. But this commerce court, if one is created, is not for a year or a decade, but it is for the whole future; it is a part of this scheme of regulation, perhaps the most important matter of legislation in this country. The rates touch everybody. The railroads in 1907 received from all sources about \$2,800,000,000, which was \$100,000,000 more than the entire circulating medium of this country, including hard money, certificates, and treasury notes—money of every form. Of course they paid back a very large percentage of that immediately, but an amount more than the entire circulating medium of the country has passed into their hands during the course of a year.

The questions of discrimination and reasonable rates will always be raised and must be passed upon by this court if it is created for the purpose herein intended; and it seems to me also that it is hardly fair

to the Supreme Court and to the Chief Justice to put the responsibility of detailing judges that are from time to time to make up this shifting court, which is not to make it a permanent personnel. That is hardly justice to the Supreme Court itself and to the Chief Justice, who would be called upon to assume the responsibility of indicating the judges from time to time, and whose action would be immediately repealable by that court and reviewable by that court. It seems to me that there should be independence of the Supreme Court—that is, independence as between the other courts, just as they exist now. The Supreme Court is not authorized to designate circuit judges to hold court and try any other class of cases, and I don't know why that should be the case in respect to the court created by this bill. And I think the court would be regarded as one of greater dignity, and that it would command greater confidence and would stand as an institution of greater strength in this general scheme which is intended to do justice in regard to all of these great matters, and that it would satisfy the people in a greater degree to the effect that justice is being done, and it would be much better, in my judgment, on that account.

There are other considerations. These questions are more or less peculiar. That has been demonstrated by the line of decisions in the lower courts in regard to these matters ever since the law was passed. A judge very familiar with the statutes of the country, in common law and in equity, is not very familiar with broad questions affecting rates and commercial conditions, economic conditions, competitive conditions, and rate conditions, as they change from time to time. Continuous contact with questions of this kind in the trial and review of cases would be of great advantage to a judge if he is to review these cases with intelligence and satisfaction to the public. Therefore, I think it would be far better, in the constitution of this court, that the judges should be appointed by the President, who himself is elected by the people every four years, than that they should be detailed on a shifting court, changing from time to time, by the Chief Justice, who holds office for life. And I say this not in the slightest derogation of the Chief Justice of the Supreme Court or any member of it. But again I say that this court is not constituted for a day, or a decade, but for all future, and as a part of this scheme affecting this great business. I think such a court appointed in the usual way would command the confidence of the country and of these conflicting interests in a way that a court constituted in any other way would not.

Mr. TOWNSEND. What do you say as to the suggestion made by Judge Knapp, that these judgeships should be for life on this particular court, instead of being selected from the circuits?

Mr. CLEMENTS. I think that is the only constitutional way. There are federal judges appointed, and must be appointed for life, and I think if the court is to be constituted that that is the way it ought to be done—appointed by the President, confirmed by the Senate, and made a permanent court.

Mr. WASHBURN. I would like to ask you how many cases are now pending in the court to set aside the orders of the commission?

Mr. CLEMENTS. Well, about 30 or 31, I think, is the number that have been brought since the Hepburn Act was passed, and two of those have been disposed of.

**Mr. WASHBURN.** Reading from your report of December 21, 1909, I find this language:

The commission has contended that under the Hepburn amendment its orders, in so far as they involve the exercise of discretion or judgment, could not be reviewed and set aside by the court, since to that extent its action was legislative and not judicial.

And then, after speaking of the matter further, the report goes on to say:

The Supreme Court of the United States has not passed upon that precise question, although its decisions seem to sustain the view of the commission; but three judges sitting as a circuit court under the expediting act in the eastern district of Pennsylvania have recently handed down a decision which entirely sustains our contention.

Now, since this report was printed the decisions of the Supreme Court have been rendered in the case of the Illinois Central Railroad Company against the commission and with respect to some other matters, and I understand you to say, with those decisions confirming the views of the commission, that the courts can not review or set aside the conclusions of the commission except where a constitutional question is involved or the powers of the commission itself.

**Mr. CLEMENTS.** That is what we understand to be the effect of these decisions.

**Mr. WASHBURN.** Now let me ask you if the recent decision of the Supreme Court to which you have referred would, in your opinion, decrease considerably the business which would naturally come before the newly constituted court of commerce?

**Mr. CLEMENTS.** Well, I certainly think it would. I think when it becomes a well-recognized and settled principle of law that an order made by the commission can not be alleged by the carrier to take its property without due compensation, and to be confiscatory, that the carriers would desist from entering the field and undertaking to contest the matter; that is to say, when it is well settled that they can not secure the substitution of the discretion and judgment of the court for that of the commission, simply upon the theory that the rate was made a little too low by the commission or for some other reason, and that they could not allege that it was a violation of the Constitution, then they would not file these cases as often as they have in the past.

**Mr. WASHBURN.** Then, under this condition in which we now find ourselves as a result of this decision of the Supreme Court, have you any doubt in your mind as to whether this proposed new court would be kept busy?

**Mr. CLEMENTS.** Well, it is very difficult to tell how far the carriers would find it to their interest, or believe it to be to their interest, to allege confiscation until that is tried. There would, of course, be a good deal put onto that court by the provision in this so-called administration bill—the Townsend bill—in regard to the control of competing lines, and the question of fact in regard to whether or not lines are competing lines and whether they fall within the inhibitions of the Townsend bill or not, and as I understand it they are to go to this court.

**Mr. WASHBURN.** Do you think that the question of determining whether lines are or are not competing might safely be committed to the commission and not to this new court?



Mr. CLEMENTS. Well, I don't know how much more could be put upon the commission with safety, so that it might keep thoroughly up with its work. It is difficult to tell beforehand how much that would involve in the way of investigating work.

Mr. WASHBURN. But it lies right along the line of the regular work of the commission.

Mr. CLEMENTS. Yes; it is closely related. I have always felt that competition affected rates; that the public policy of the country was to leave competition to do its natural work in the question of rates so far as it can be done.

Mr. WASHBURN. If it were not for the new duties conferred upon this proposed court in this pending Townsend bill, and if the business of the new court were confined to the business which now goes to the courts from the commission, and in view of the recent decision of the Supreme Court, do you still think this new commerce court would find enough work?

Mr. CLEMENTS. It is very difficult to answer that question—to anticipate the future. Of course, these questions where confiscation is alleged in respect to important work would present a very large question in a single case for the court to deal with, but how far the necessity of such a court, as appeared a few months ago, would be obviated by these decisions in the diminution of controversies to go before the court, is hard to tell. To illustrate what I have just stated about the importance of a case, and the length of time that possibly might be required by one case, we may take the Northwest Pacific Coast lumber case, where the roads advanced their rates two or three years ago materially on shipments of lumber from Washington and Oregon to all eastern points; and after hearing, and the rates had been in effect for eleven months, the commission determined that these advances were for the most part unjustifiable, but did justify some parts of the increased rates in certain territory. The carriers in that case did not undertake to enjoin our order; that is, they didn't undertake to get an injunction. They put in their rates and proceeded to pay reparation on shipments on the basis of our decision. But at the same time they did file a bill for injunction, and they have been taking testimony on that for months; have had it before a special master taking testimony, in respect to the value of the roads—the Northern Pacific and other great trunk-line roads—their capitalization and their reorganization from time to time, and the volume of their business. The many questions which they have been going into in respect to matters of great moment, such as the rates on lumber over a large territory, practically two-thirds of the United States, must take so much time itself that it requires a long time to investigate them in respect to the question of confiscation; and where we are going to ascertain the value of the road, what it ought to earn, and how far its earning capacity will be affected by the particular order made in the case, it takes a long time to investigate intelligently, and to determine any such question as the constitutionality of the rates made by the order. So that I can imagine that not a very great number of cases would keep the court fairly busy, if they raised questions of that sort to be tried on facts in regard to valuation and reorganizations and their profits and expenses in doing their entire business.

Mr. WASHBURN. How many of the pending cases, as you recall, involve constitutional questions of the kind that you have referred to?

Mr. CLEMENTS. I have not undertaken to analyze the cases with reference to that; but a good many of the cases that have been brought would be, in fact, minor cases as compared with a case such as I have referred to.

Mr. WASHBURN. Do you have in mind how many of the pending cases would be affected by this recent decision in the Illinois Central case?

Mr. CLEMENTS. I have not, other than as Mr. Knapp stated here the other day, that he had asked one of our attorneys to indicate, among some 30 cases now pending, how many of them would probably not have been brought under the present interpretation of the law by the Supreme Court, and I think they made out that it probably would not have diminished the number of cases more than 5 or 6, and that there probably would have been some 25 cases yet under the law as now. Of course, it is easier to know that many of them would be very unimportant cases.

The CHAIRMAN. You say that you have had 31 cases brought in the courts since the Hepburn bill was enacted?

Mr. CLEMENTS. I think that is right.

The CHAIRMAN. That certainly would not be to exceed nine or ten a year.

Mr. CLEMENTS. Well, it is fair to say that practically all of those have been brought in about the last year and a half; nearly all of them.

The CHAIRMAN. Is that the case?

Mr. CLEMENTS. That is the case, as I understood the chairman to state. He looked into that particular matter and stated the other day. I may have misapprehended what he said, but I think that was it.

The CHAIRMAN. That there were no cases brought into court until two years after the Hepburn bill was passed?

Mr. CLEMENTS. I said a few, but practically that.

The CHAIRMAN. Practically that?

Mr. CLEMENTS. Perhaps after a year and a half. I know when we made our annual report, I think for the year 1908, there were very few contests at that time.

Mr. BARTLETT. According to your report for 1908 there were 17 up to that time.

The CHAIRMAN. And is that about the normal proportion?

Mr. CLEMENTS. Yes.

The CHAIRMAN. I wondered if all the railroads for a couple of years had quit litigating on account of the passage of the Hepburn law.

Mr. CLEMENTS. What I meant to say was that a year went by after the Hepburn law was passed before there were many cases filed. There was a little while elapsed before the commission got to making any orders, and then many of them were upon rather minor matters. And, as always happens, when one of these bills making definite advances is passed in relation to regulation there is a short time when the railroads practically acquiesce in what the commission requires.

The CHAIRMAN. Do you think—and you have knowledge of the character of the cases—that 10 or 20 of these cases could occupy a court and keep it busy for a year, providing it did not take the testimony itself?

Mr. CLEMENTS. I should think not. If the testimony is taken by other instrumentalities, then I do not see how they could be engaged the whole year upon that many cases.

The CHAIRMAN. If we should provide a court such as you suggest, to be appointed by the President for life, but should want to discontinue that court in a few years, what would happen then?

Mr. CLEMENTS. I have not looked up the question as to the dismantling of a court, and what you would do with the judges; but I believe there would not be any difficulty about abolishing the court. I don't suppose that Congress is bound to maintain forever all of the courts that they create from time to time.

Mr. BARTLETT. I may say that there was a time when they abolished all of their courts; when Congress passed an act abolishing them; and there was a bill introduced by Senator Hoar to reorganize the whole judicial system, which would virtually abolish quite a number of the district and circuit courts.

Mr. RICHARDSON. They did not abolish the place of a judge holding an appointment for life.

Mr. BARTLETT. But they could cut off his salary.

Mr. CLEMENTS. That has not occurred to me as a practical matter, Mr. Chairman.

Mr. KENNEDY. With reference to competing lines, we had before us a gentleman who contended that all lines competed in this country, and to a certain extent perhaps they do. If we should provide with reference to competing lines as we do in this Townsend bill, the question of whether two lines competed within the limitation that we may put upon that legislation in the bill would be a question of fact, wouldn't it, always?

Mr. CLEMENTS. I think so.

Mr. KENNEDY. You have no power to legislate, but are a legislative commission, to act within the instructions we give you, and the questions would always be a question of fact which could be litigated in court as to whether two lines were competing in the manner which we described in the law or not.

Mr. CLEMENTS. I think it would not always be an unnecessary question in a case where it was alleged they were merged when they were competing lines.

Mr. KENNEDY. You would have a discretion to determine what kind of competing lines you would inhibit from combining; but that is to be fixed by law.

Mr. CLEMENTS. I should think so.

Mr. KENNEDY. So that might be a prolific source of litigation.

Mr. CLEMENTS. I should imagine a good many complicated cases would arise under a provision of that kind.

The question was asked of the chairman the other day by some one, referring to the importance of having rules—that is, principles—to guide the commission, so that it would not be simply an unbridled discretion in regard to dealing with these questions—I don't mean that anybody used that word, but I use it myself, not thinking for a moment of a better one—of having the act in such a way that the

commission, although it is vested with a combination of legislative power and administration, and different theories have been presented as to that, should have the authority of law for what it does or what it is restrained from doing, so far as it is possible to write into the law rules that shall govern. The Supreme Court in interpreting the antitrust law was appealed to by the railroad lawyers in the joint traffic cases especially, and they went so far as to hold the case for reargument at the request of the railroad attorneys, with a view of having revised their opinion in the trans-Missouri case, and hold that the meaning of the antitrust law, which declares any agreement, contract, and so forth, to be illegal and in restraint of trade and interstate commerce, to condemn only such contracts in restraint of trade as were unreasonably in restraint of trade. But the Supreme Court has steadfastly adhered, on reargument of these several cases, to its original determination, that it was the policy of the law and of Congress to provide contracts of that sort, and have refused to qualify the meaning of the words of the statute to say that only unreasonable restraint is prohibited, but restraint of trade. Of course, they have gone far enough to say that it is a direct restraint that is forbidden, and that there is a field where it can be said that the action of carriers is not directly in restraint of commerce where they affect it in some remote degree, such as competition in lines not parallel and far removed from one another; in such a case it may be said that there is some degree of competition, but it is remote and indirect in many cases. And I assume that any court in reaching questions of that kind would exercise the same rule of construction that they have indicated in regard to the antitrust laws.

Mr. WASHBURN. You think, Judge, then, that the Supreme Court has never in any way, in its more recent decisions, modified the doctrine laid down in 1897 in the trans-Missouri case, touching the interpretation of the Sherman antitrust act?

Mr. CLEMENTS. I do not think it has.

Mr. KENNEDY. If we should qualify this part of the Townsend bill that we have been talking about by putting in the word "parallel," to define what railroads should not form a combination, the question of whether a road was so nearly parallel in a mathematical sense as to be within our meaning would be a question of fact, would it not?

Mr. CLEMENTS. Yes, I think it would; and yet there are numerous decisions of state courts defining what a parallel line is. I have not looked them up with reference to this immediate question, but many of the States have that language in the law—of prohibiting mergers of competing and parallel lines.

Mr. BARTLETT. They have in the constitution of the State of Georgia.

Mr. KENNEDY. It makes no difference how definite the law may be, a question can be raised which will be a pure question of fact, whether or not you are within the language.

Mr. CLEMENTS. Undoubtedly; I think so.

Mr. RICHARDSON. I want to ask if, under the Townsend bill, the commerce court is not clothed with any other or additional jurisdiction over the orders and proceedings of the Interstate Commerce Commission, and if the circuit court has not now the same jurisdiction that the commerce court would have over matters, orders, and proceedings of the Interstate Commerce Commission?

Mr. CLEMENTS. As we understand it, it is the intent of the bill creating this court to confer that power, and no more. We have suggested some particular language with a view of other expressions in the bill, which we regard as necessary in order to make absolutely sure that that would not happen.

Mr. TOWNSEND. Have you seen the last bill that has been presented?

Mr. CLEMENTS. It was brought to my attention the other day during the session, and I have not had a chance to look it over.

Mr. RICHARDSON. I think that Mr. Knapp stated that the jurisdiction was the same, and I wanted to inquire wherein and how the public interest is benefited by the establishment of a commerce court that has exactly the same jurisdiction and no more than the present court has.

Mr. CLEMENTS. As I understand the formation of this court—and that has been my understanding from every source from which I have heard it, so far as the Interstate Commerce Commission is concerned, and also the members of this committee so far as they have been in favor of a court—was for the purpose of expediting to finality these controversies.

Mr. RICHARDSON. Finality?

Mr. CLEMENTS. Yes, sir.

Mr. RICHARDSON. Haven't they a right to appeal to the Supreme Court?

Mr. CLEMENTS. Undoubtedly; but they could get there quicker through a court of this kind, for instance, in a case where the California dockets should be crowded—

The CHAIRMAN. You say that they could get there quicker?

Mr. CLEMENTS. I think so.

The CHAIRMAN. The only grounds upon which an appeal can be taken are the grounds of jurisdiction or a constitutional question, upon both of which it is assumed that probably an appeal to the Supreme Court of the United States can be made. So, how will the case get there quicker and go through the intermediate courts when it can go just as quick—that is, go directly to the Supreme Court from the circuit court?

Mr. CLEMENTS. As it is now it goes to the circuit court first, and under the expediting act, upon the certificate of the Attorney-General that it is a case falling within the provision of the law, it is necessary to get three judges together before they can consider it—that is, one judge is not authorized to enjoin the orders of the commission; it takes a court of three on a certificate of that sort from the Attorney-General.

The CHAIRMAN. It takes the same number of judges that sit in the circuit court of appeals?

Mr. CLEMENTS. Yes, sir.

The CHAIRMAN. And there are always three, practically, at those places?

Mr. CLEMENTS. Well, we have found in actual practice that in a number of cases it quite often occurs that they could not be had at the time the case was set down for hearing—at the time the notice was given—and in some cases we have had to extend, on the suggestion of the court itself, the effective date of our order; put it forward to give the court time to reach the case before the order would be-

come effective. Of course I suppose that could all be taken care of, so that it would not ultimately result in great delay due to that fact alone. But take an order that becomes effective in July or August, when the courts have adjourned on vacation and have closed their business for the season, some of the judges are abroad and some at various resorts having a rest. In that case, if an important matter should come up, it would be impossible to get them together.

Mr. ADAMSON. If you should have made a mistake in your estimate as to the probable amount of business of this court, and, on the contrary, a great multitude of cases should get into that court, wouldn't it be possible for business to be just as congested in that court as it is under the present system?

Mr. CLEMENTS. Yes; of course, if there should be such a vast number of cases. But I would not anticipate, judging by past experience, that the court would be overwhelmed.

Mr. ADAMSON. If the carriers should regard only one channel, which would be created by that court, as better adapted to the appeal, and the congestion of the court would give them more time, then it would afford them a good reason for favoring this court, would it not?

Mr. CLEMENTS. Well, it might; I don't know. I had not supposed that that was any motive that had actuated them, and I really do not know to what extent they do favor it.

Mr. ADAMSON. Have you observed that they are anxious to expedite the trial of all these cases?

Mr. CLEMENTS. No; we have not as a rule. Under the old law, where the commission had to go forward and get a decree enforcing its own order, we had a great deal of trouble, and there was great delay and difficulty in bringing the cases to a hearing. Under the proposed act the matter is reversed, the order of the commission automatically becomes effective by its own virtue at the end of the time fixed by the order of the commission, not less than thirty days, so that the carriers must go into court in order to get rid of it.

Mr. ADAMSON. I suppose the purpose of this provision is to exclude the jurisdiction from all other courts upon these specified purposes so that the commerce court judges can do these particular things?

Mr. CLEMENTS. My understanding is that it does exclude all other courts, and the argument for it was to avoid the confusion of conflicting and various views of the different circuit judges all over the country. For instance, a circuit would have one case of this kind, a rate case, and perhaps no other for two or three years; and I have thought in a great many cases that they give their opinions and decisions, with all due respect to the courts, in a way to indicate that they were not as familiar with cases of this sort as they were with cases of common law and equity that ordinarily came before them.

The CHAIRMAN. The proposition in respect to the creation of the commerce court is in order to have a court pass upon questions involved in civil suits affecting freight rates and other railroad matters?

Mr. CLEMENTS. Yes, sir.

The CHAIRMAN. Are not the larger proportion of cases affecting those matters, cases that relate to the action of state boards and state rates, involving practically the same questions as are involved under

interstate propositions; and if so, if the commerce court should be created to determine with reference to interstate propositions upon the ground that you would get better decisions that way, should not that court be vested with exclusive power to enjoin the enforcement of state laws and the orders of state railway commissions, and so forth?

Mr. CLEMENTS. Well, it would be difficult for me to offer any reason why the matter should be differently treated. If it is a constitutional question, a question of confiscation, whether it is a state rate or an interstate rate, I would not be able to offer any reason why, when a federal court is appealed to to enjoin a confiscatory rate, the same argument made to this court would not apply to the state rate as well as the interstate rate. It is a question of power under the Constitution of the United States, a federal question, and I should think that the same reason that would be determined by this court in the one case would apply to the other.

Mr. WASHBURN. Inasmuch as the cases hereafter to be brought are likely to be, most of them, those involving constitutional questions, if there is a disposition on the part of the circuit court to hasten the proceedings, there is no reason, is there, why they can not be certified very promptly to the Supreme Court?

Mr. CLEMENTS. Do you mean decided?

Mr. WASHBURN. I mean certified to the Supreme Court under the terms of the so-called expediting act, which provides that in the event of the judges sitting in such cases being divided in opinion, the cases shall be certified to the Supreme Court for review, and so forth. Now, with the circuit court, recognizing that a constitutional question is involved, is there anything to interfere with its being promptly certified to the Supreme Court?

Mr. CLEMENTS. The Supreme Court has recently decided, as I understand it, that that provision for certification on the basis of a division of opinion in the lower court is not good except perhaps where they are equally divided. That would make a case go to the Supreme Court. But they have decided where two judges differed from one on the same bench in one of those cases, that they could not certify the case up and make the Supreme Court try the case originally.

Mr. WASHBURN. Is there any reason that occurs to you why this expediting act, if it is not in satisfactory shape now, could not be so amended as to insure speedy hearing of these cases by the Supreme Court?

Mr. CLEMENTS. It all depends upon whether you could secure a speedy hearing from the court below. I think the Supreme Court will hold that these cases can not, by any authority of legislation, be put up to it to be originally tried de novo. They have practically said that that was a court of review only.

Mr. RUSSELL. What is your opinion about the proposition to limit the right of the Interstate Commerce Commission to appear before the court of commerce and take part in the conduct of any litigation in the court of commerce?

Mr. CLEMENTS. That is a matter which I think under the present law the Attorney-General could take entirely under his own control—that is, the law says that when proceedings are instituted by the commission it shall be upon the request of the district attorney, who shall

file and prosecute a suitable proceeding under the direction of the Attorney-General. So I suppose that that could be done now. The real practice in the past has been that Congress gave an appropriation which could be allotted for the employment of special counsel in particular cases. I think that appropriation has been limited to \$20,000 for some years.

**The CHAIRMAN.** You do not bring suits yourselves any more?

**Mr. CLEMENTS.** That was commenced under the old law when we did bring suits, and the same rule has been followed since. Under the Hepburn Act we had an allotment in the general appropriation for the support of the commission that we could use for the employment of special counsel in particular cases, under the approval of the Attorney-General. It was all subject to his approval under both statutes.

**Mr. RUSSELL.** The proposed law, in section 5, says:

The Interstate Commerce Commission and its attorneys shall take no part in the conduct of any such litigation.

**Mr. CLEMENTS.** Well, of course it must be frankly admitted that a provision of that sort is liable to work out something like this, and I don't know whether it will or not. I don't know how far it might embarrass the enforcement of these orders in the future, but in many of these important cases the lawyer representing the complainants has worked out all the facts and presented them to the commission, and they are familiar with the questions of fact and law and the traffic conditions involved in the matter; and in some cases have done a vast amount of work in the preparation of the cases originally before the commission, and of course a provision of that kind would render unavailable his services in the case, and the usefulness that he might be in the conduct of it, due to his great familiarity with it from beginning to end in all its details as to questions of law and fact.

**Mr. TOWNSEND.** Has there been any conflict between the attorneys for the commission and the assistant attorneys-general?

**Mr. CLEMENTS.** I don't know to what extent. There may have been some slight misunderstandings in regard to some questions of law that could be stated in a brief. Mr. Prouty, a member of the commission, has had direct touch with our lawyers in the preparation of these matters for the courts. I think there has been some difference of opinion as to questions of law that should be stated or contended for in some of these briefs. I don't know that we can say that it was a serious conflict.

**Mr. TOWNSEND.** Would it be embarrassing to you—and you need not answer the question unless you wish—to answer this question, whether Judge Prouty himself, who had charge of the law end of the commission, is not favorable to the Department of Justice taking exclusive control of these matters?

**Mr. CLEMENTS.** Well, I do not know whether he favors it or not. I ought to say that I do not understand that he is making any opposition to it.

**Mr. ADAMSON.** In changing attorneys it is possible before the court to present the case in such a shape as to make a different appearance, of it entirely, is it not—that is, in hearing the same case?

**Mr. CLEMENTS.** The Attorney-General might, of course, not think that the commission had decided the case right, and he might think



that it was an order that was not defensible. I do not know whether any trouble would come out of that or not; I have not apprehended that there would, but of course it is possible.

Mr. ADAMSON. A different set of lawyers might proceed in a different manner in presenting the case and present it in an entirely different aspect to the court, so that the court would not pass upon the same matter that you passed upon really.

The CHAIRMAN. Does not the present practice sometimes lead to considerable extravagance in taking care of cases? For instance, I had my attention called last spring, when I was home, by accident, to three attorneys from the Interstate Commerce Commission, each appearing in Chicago before one of the courts there—all before the same court—and each one in a different case, on a motion where the entire three motions were disposed of in less than ten minutes' time, but it required three attorneys of the Interstate Commerce Commission to make a special trip to Chicago, on a limited train, in order to appear in three cases on formal motions that I would have sent an office—not an office boy, but a clerk in the office—to attend to, and to all three of them at once.

Mr. CLEMENTS. Well, Mr. Chairman, I doubt if you would send an office boy from Washington to Chicago to attend to a matter in a federal court.

The CHAIRMAN. I would not send an office boy from Washington to Chicago to attend to a matter of that sort, but I should have written to the district attorney in Chicago and directed him to appear in court on a formal motion that would be granted as a matter of course.

Mr. CLEMENTS. I don't know what the motions were nor what the cases were, and how far they would have been granted as a matter of course. But it has not been our experience that we were always very safe in the presentation of these questions, with even good lawyers not familiar with the special nature of them, and with the line of controversy. But I am perfectly free to admit that on the state of facts to which you refer there seems to have been unnecessary duplication in the presentation by the three lawyers. I don't know the special cases in which they appeared, but it must have been quite certain that that would be an unusual thing.

The CHAIRMAN. I am not making that statement as a criticism of the officials, as perhaps no one of the three knew that the other was to make a motion of that kind.

Mr. CLEMENTS. There has been a liability that controversies that have arisen in Iowa would come up in Chicago—I don't know whether Iowa is in that circuit or not—but one attorney for the commission might be in Iowa, if that is the case, in the conduct of one case and another in another circuit, and these motions were simply incidental in the same way, and the attorneys being in different parts of the country and looking after these things from different standpoints might not have been aware that each one was going to be there in reference to the cases that came up from the different States. But undoubtedly a little administrative attention to the possibilities of such things happening as that would result in their correction. I am perfectly certain that there has not been enough of it to amount to any serious expenditure of money or to any extravagance.

The CHAIRMAN. I would like to direct your attention to another matter in respect to water carriers. Have you noticed the arguments that we have printed of Mr. Hayne, who makes a very vigorous protest against including the law as to water lines? If you haven't noticed the argument, I wish very much that you would look it over—you and the other commissioners, if you please—and give us your opinion with reference to the amendment that he suggested.

Mr. CLEMENTS. I have not had a chance to read these hearings.

The CHAIRMAN. I think that the amendment that is suggested is to the effect that the commission shall not have power to make a through route, including a water line, where a satisfactory through route exists, although they may have that power as to the different railroad lines.

Mr. CLEMENTS. Well, I would be glad to look at that and to take it up with the commission. I have not been able to read the reports of the hearings yet.

The CHAIRMAN. Of course, that is an important matter to know, whether we are changing the statute by leaving that little provision in the Townsend bill, which is already in the law, but which may cause a change, by other changes in that section, not contemplated.

Mr. CLEMENTS. Most of the matters that have come before us in a particular way have been complaints, formal or otherwise, on the part of water lines originating business on a river, for instance, that could not get a through-route arrangement with the connecting railroad which already had one with another water line on the same river.

The CHAIRMAN. I have suggested this matter, upon which I am utterly at sea as much as a floundering vessel would be, and I wish you would give us an opinion upon that proposition.

Mr. CLEMENTS. I will look into it.

Mr. STAFFORD. Have those complaints arisen in respect to the interior waterways, or have they been also applicable to the coastwise trade?

Mr. CLEMENTS. Most of them in the interior water lines. One of the earlier cases applied to the Tennessee River, before I was a member of the commission. There was a steamboat line plying between Decatur, Ala., and Chattanooga, Tenn., and the Louisville and Nashville Railroad, I think it was—it may have been the Nashville, Chattanooga and St. Louis Railroad, which is controlled by the Louisville and Nashville—had an arrangement with one boat line and refused to make one with another line. The commission held that it had no authority to compel a through route, and you can see how easy it is for a railroad commanding a situation like that to give the river business to one boat line and destroy the other by simply doing what under the law it was permitted to do—make the through arrangement with one and refuse it as to the other.

Mr. RICHARDSON. That was a boat line running between Hobbs Island and Gunterville. There was some provision in the river and harbor bill by which there was an appropriation of \$15,000 to dredge a channel between Hobbs Island and Gunterville, because there is a boat line which carries the mail there; the people are absolutely dependent upon it, and there are times when for four months, on account of low water, it can not operate. I think that is the boat line you refer to. The Nashville, Chattanooga and St. Louis Railroad

does not run to Decatur, but it does run to Huntsville and connects with the river at Hobbs Island, and the boat line runs from there on.

Mr. CLEMENTS. That was a former case decided by my predecessor on the commission.

Mr. STAFFORD. Then, as I understand the complaint in the case you instanced, it was that the railroad delivered some traffic to one individual boat line and refused to share it with the other, rather than that the railroad connecting line refused to receive from the boat line and dispatch it over the rail line?

Mr. CLEMENTS. I think it was both ways—that the railroad had an arrangement of through rates with the boat line and would take a division of less than its own railway rate on through business going from one boat line, but would charge its full railroad rate on business offered by the other boat line, so that the tendency was to drive all the business to one boat line and away from the other. We have had several cases of that kind, one on the St. Johns River in Florida.

Mr. STAFFORD. Have any cases arisen in connection with trade on the Great Lakes?

Mr. CLEMENTS. I do not recall any question of that kind there. Of course, a great many cases have arisen in regard to that business, but most of those boat lines are regular lines and are owned by the different railroads. The New York Central has its line of boats, and so do the other roads there; yet they are incorporated, most of them, if not all—managed—as separate boat lines, but owned by some railroad system.

Mr. STAFFORD. But the gentleman who appeared here the other day, in protesting against extending the jurisdiction of the commission, represented an independent line, and not lines such as the Anchor Line, which operates in conjunction with the New York Central, but a line such as the Detroit and Cleveland Navigation Company, the Goodrich Line of steamers from Chicago to Milwaukee, and other independent lines which are not, as I understand it, controlled by railroad companies. In the same way with the representative of the Mallory Line, which, I understand, is an independent line. He protested against any such authority being vested in the commission.

Mr. RICHARDSON. I don't recall distinctly, as you do, the facts connected with the Nashville, Chattanooga and St. Louis Railroad and the Tennessee River, but don't you think that the Nashville, Chattanooga and St. Louis Railroad did its own boating toward the city of Huntsville, and handled through traffic from Nashville to Attalla by way of Guntersville and the river, and refused to give another competing boat line the same terms?

Mr. CLEMENTS. That case was heard and determined by the commission before I was a member of it, but I am perfectly certain that the railroad did not own their boat at that time. This was a test between boat lines: one wanted the through business and it was denied. And the same thing has often taken place in other places. The importance of this matter, so far as I see, is mainly for the purpose of giving a boat line, situated like that, a fair chance to do business, and to give the public any benefit of competition that comes from it in the use of these rivers upon which the Government spends so much money to make them available for that business. And I do not suppose that that would interfere with the proposition that this

gentleman has. He was undoubtedly looking at it from some other standpoint.

The CHAIRMAN. We will furnish you copies of hearings containing those arguments, and I would like to have the commission give us a written opinion in reference to them.

I would like to direct your attention to another matter upon the question of the time during which the rate shall be suspended. The Townsend bill proposes two months, and your commission has suggested four months. Can you give us an idea about how long it takes your commission now to hear and determine an important case involving rates?

Mr. CLEMENTS. Well, I referred a moment ago to the Northwest Pacific Coast lumber cases, which were very important ones. They were all practically handled as one, although there were several of them, but they were disposed of in one record, and we disposed of them in about eleven months. But, of course, in the meantime there were many other things done. They were, however, handled with a good deal of expedition, under all the circumstances, and they involved the rates from the States of Washington and Oregon to every place in the East, and from Idaho to the Atlantic Ocean.

The CHAIRMAN. Assuming that we do not desire the commission to abandon its ordinary duties, would it be practicable for the commission, when it ordered a rate suspended where the matter involved probably a great many rates in different parts of the country, to hear and dispose of the merits of the proposition within two months' or four months' time?

Mr. CLEMENTS. I think it would be very difficult, if not impossible, to do it within either period in some cases. In August, 1908—I think it was 1908—the chairman of the railway commission of Texas, with Senator Culberson, came into our office, along in August, I think it was, and protested against the increase of rates from all points in Texas, class and commodity rates, and all. The notice had been given that there would be an increase on the 10th of August, perhaps, and a few days before they were effective these gentlemen were there to find some way to protest against it, and we told them that the only safe way would be to institute a proceeding that would be clearly within the law and to file a complaint. Some intimation was made on their part independently, on their own initiative, to the effect that we should investigate it, but we pointed out the question of doubt if we did that, and suggested that if we reached a conclusion and made an order condemning these increased rates, the question would be raised as to whether or not we had any jurisdiction, since the fifteenth section of the Hepburn Act says that upon full hearing the commission can prescribe a through rate, and they ought not to put in right at the threshold a question of controversy that might endanger the whole thing if an investigation was had. It was very important, and it covered a large field.

They filed their complaint, and some members of the commission first went down to St. Louis and spent three or four days there taking testimony, and it was suggested by two or three parties that there ought to be testimony taken in Texas, and an appointment was made there, and a week was spent there taking testimony; and at the conclusion of that there was further testimony to be taken at the request of the parties. The complainants wanted to present testimony them-

selves, as well as the railroads, and quite a number of months have been spent in taking testimony at different places at different times, and the proceedings, of course, had to be interrupted on account of the engagements of the lawyers in other matters in other courts; and in a case of that kind it seems to me impracticable always to be able to investigate these things and determine them either within two months or four months.

We had another case of that kind arising with respect to grain rates from the Ohio River to Atlanta and southeastern territory, and when we had gotten through taking testimony in that case the lawyers for the complainants wanted sixty days in which to write their briefs and get ready for an oral argument after the testimony was completed. The complainants themselves asked for sixty days in which to complete their briefs alone, so that as a practical matter, if these matters are to be thoroughly investigated, and then the parties are to have time to write briefs that will be of any value, and if they are to have the right of presenting oral argument, which they will probably insist is involved in the "full hearing," from the language of the statute, I do not think that two months is sufficient time in which to do these matters.

If the policy of Congress would be that the commission would hear the testimony and confer among themselves about it, without having to take it up carefully afterwards and consider it and make any report about it and hear oral arguments and hear briefs, we could, perhaps, sit down and hear testimony in a general way with respect to these great controversies, and hear the oral arguments, such as lawyers could make upon that sort of hearing of testimony, and reach some general conclusion, and state it, and deal with it in that way.

The CHAIRMAN. May I make this suggestion: We are all lawyers—I think I have that title, anyhow; I speak for myself in this last respect—and we know that it is not possible in the due administration of justice to determine great cases, after having had hearings and arguments, within four months' time. But would it be practicable if we should give to the commission power to suspend a rate for four months and then the further power at the end of four months within their discretion to make a further suspension of the rate until they had determined the merits of the case, it being possible within four months' time to ascertain whether there were any meritorious propositions involved? Would it?

Mr. CLEMENTS. I should think a provision could be framed upon that line so as to make it practicable.

The CHAIRMAN. Of course it is easy enough to make a law, but the question is, Would it work?

Mr. CLEMENTS. I think that would work. The commission could tell at the end of four months whether it was necessary to extend the time or not, if it had reached the conclusion at that time that there was no merit in the case, and without taking time to write it up and make a report upon it in all of its features they might say, "There is no use to extend this time." In that way you could eliminate all cases except those in which it was made to appear that there was probable cause for complaint and necessity for further time to fully investigate it and make a conclusion in the case, which the com-

mission would not do if it was demonstrated that there was probably merit in it.

The CHAIRMAN. In your opinion, would it seem quite logical for us to give to the commission power to suspend a proposed rate for the purpose of having a determination of the matter before the rate went into effect, and then in the middle of the consideration of the case, at the end of four months' time, permit the rate to go into effect without a determination of the merits of the proposition?

Mr. CLEMENTS. It seems to me that would not help the situation any in a case where it would be necessary to do that. It might just as well have gone into effect in the first instance as at the end of two months. And one very strong argument, which I think must appeal to anyone in behalf of some provision of this sort, is well illustrated in these lumber cases. In these Northwestern lumber cases, where some of the large shippers went into court and got an injunction against the collection of the increased rates, they put up a bond—a number of them did—out there, aggregating as much as two and one-half million dollars, to pay back whatever of the increased rate was justified by the commission and the finding of the court. At the end of eleven months they were to have an accounting in the court out there, and did have it, and it appeared after the end of eleven months in court that those parties to that injunction proceeding would have been liable to have paid \$1,250,000 on their shipments in eleven months if the full advance had gone into effect. As it was, at the end of that period, under the injunction and accounting in court, they were found to be liable for about \$350,000. That illustrates that in that time there would have been paid back a million and a quarter, nearly, and that did not cover all the shipments in that country there. But, on the other hand, it did show that, according to the decision of the commission, if it was correct, the carriers would have been deprived of about \$300,000 or something over if they had not been protected in some way. They were in this case under a bond.

In the southern pine cases, where the rate was not enjoined, it went on for about four years before the controversy was finally settled under the old procedure by the Supreme Court. The higher rate on 200 pounds was dissolved, and it resulted in reparation claims for \$3,000,000 or \$4,000,000, and they have since then been in process of adjustment. The roads established a clearing house in New York, and one in Macon, Ga., and one here in Washington, to check up what reparation was due on these hundreds of thousands of shipments in those three or four years, and then they made some sort of a compromise. It was nearly impossible to settle it except in that way. They had to find out to whom the money was due; who was the actual shipper. Sometimes it was claimed by the consignor and sometimes it was claimed by the consignee. They had to find out what proportions were to be paid. The commission had all this testimony, but they had not any way by which to prove their claims except to call for the records of the railroads, and they have had this going on at great expense for three years nearly—between two and three years—and the ultimate outcome as estimated will be, as an adjustment of these matters, that the roads will get back something like a million and a half dollars.

The shippers are accepting about 67 per cent of the face value of what would be their claims, as can be best estimated from such records as they have, without interest. I think they have done a wise thing, because of the great difficulty of making the proof in those cases and the great length of time it would take to follow up these shipments and bills of lading and ascertain the weights and everything incident to them. It illustrates the great confusion which comes both to the railroad and to the shipper when money has to be paid back.

The CHAIRMAN. Of course, the ultimate consumer does not get any benefit from it anyhow.

Mr. SIMS. In order that the commission may do absolute justice in each case, why should they not have the discretionary power to suspend the rate until they could find out the facts, in order to do absolute justice?

Mr. CLEMENTS. That seems to be the most practicable thing and approaches more nearly what would be a just thing to do, because in nearly all of these cases it must be remembered that the rate which was advanced was a rate which the railroads themselves have made and which was in effect for years, and it is simply holding in statu quo a situation which they themselves have voluntarily created and have been apparently satisfied with for a long period of time. It is not a hardship to say, "If you have established these rates yourselves and have been content with them and have done your business under them, and you want more now and propose to get it by an advance of rate, the matter should be held in statu quo until a reason could be shown for it."

Mr. KENNEDY. Judge, I would like to call your attention to the words "after full hearing." Has the contention of the attorneys been in these hearings that they have not been fully heard, and does that phrase protract the hearing of the cases?

Mr. CLEMENTS. We have always, so far, been able to give them a hearing, with the taking of testimony, and the filing of briefs, and the giving of oral argument in such a way that they have been content with it, and content to let it alone, at least. Of course we can not give all the time for oral arguments that they would have taken. We have to limit that in almost every case.

Mr. KENNEDY. It occurs to me it would be well to strike out the word "full" and let the commission determine when they have heard enough. A little discretion like that would perhaps expedite these hearings.

Mr. CLEMENTS. That might perhaps remove the possibility of a controversy. I refer to the language of the statute, not that there has been a claim made in any case that we have not given them a full hearing. We have had to limit the oral argument in most cases, but they have accepted it. All the courts do that, and there has been no real contest that we had denied them of any legal right. But if we had to act in such a manner that we would take written testimony and not wait until it could be written up and briefs could be made, I do not know but that they could say that was not a full hearing at law.

Mr. KENNEDY. Don't you think the taking out of that word would give you the right to conclude the hearing when you felt sure you had heard enough?

**Mr. CLEMENTS.** It would remove possible contention in some future case.

**Mr. STEVENS.** Might it not be, Judge, that under the doctrine laid down by the Supreme Court that only jurisdictional and constitutional matters can be contested—might it not be on a jurisdictional matter that they had not had a full hearing? Might not some of the parties contend before the court, whatever court would have jurisdiction of your orders that had been contested, that the hearing had not been a full hearing, and therefore assail your whole jurisdiction under the other language?

**Mr. CLEMENTS.** Yes; that is what I referred to a moment ago. If we had to do this in sixty days, and we could not hear it in what would be the ordinary way, there might arise a question of that sort.

**The CHAIRMAN.** We put that in there, according to my notion, for this reason: We did not wish the commission, in disposing of one case, to assume that it had learned all that there was to be known on the subject in connection with a similar case, because it had heard and disposed of that one case, which would be the tendency of every administrative body.

**Mr. CLEMENTS.** Yes.

**Mr. TOWNSEND.** You have no trouble about this now, do you, Judge?

**Mr. CLEMENTS.** No, sir; not on these words so far.

**The CHAIRMAN.** I want to ask you another thing, and that is as to the proposition of appeals by shippers. Would it be practicable or beneficial or injurious, in your judgment, if we should confer upon shippers the power to appeal to the courts for the determination of the law where the commission could throw the claim of the shipper out of court on legal grounds and not upon questions of fact?

**Mr. CLEMENTS.** Well, I have frequently thought that it was very plausible on the part of the shipper to say that he is not satisfied with what the commission has done and that he ought to have the right to appeal, and as a member of the commission I would be awfully glad if he could have the right to appeal if there was some way in which it would be practicable. But since the Supreme Court has said that the making of a future rate is a legislative act, how can you confer upon any court the power to review it and substitute its judgment for that of the commission, any more than you could have the judgment of the court substituted for that of the judgment of Congress as to the propriety of the legislation?

**The CHAIRMAN.** Of course that goes without saying. You can not, and I have not seen any method yet by which you can get an appeal. But it has been urged very strongly here that where the commission decides a question of fact and then decides upon the facts, and under its construction of the law it has no power to grant relief as a legal proposition there might be some way of having the courts construe the legal proposition.

**Mr. CLEMENTS.** I suppose there might be some certification of that sort or provision of law put to a court that would review a question of law and instruct the commission to proceed, or indicate to it some other construction of law. I suppose such a machinery as that is possible.



The CHAIRMAN. I think there is some machinery of that sort under the English statute. I am not sure what it is.

Mr. TOWNSEND. Do you know of any cases where that would have been employed by the shipper if he had had the right?

Mr. CLEMENTS. I could not say I have knowledge of any except in one case. I think we have a very peculiar case pending in court now, and that is where a shipper has filed a bill in the circuit court to compel the commission to award reparation on a large number of shipments in which the shipper had claimed reparation and which we had refused, and he has undertaken to do something which is equivalent to mandamusing the commission and seeking to compel it to go ahead and let it be done upon the complaint that we had not done the proper thing. That is the only case where I could point that that course would probably have been taken if it had been open to the shipper. Of course, some of the shippers have been very much dissatisfied with some of our decisions. That particular case is where, on hard-wood shipments of lumber, we allowed reparation and condemned the advanced rate; allowed reparation back to the time the complaint was filed. But we did not go back to the full limit or statutory period and allow reparation for that whole period.

Mr. TOWNSEND. Is any constitutional right violated now by the shipper or the carrier? Do you know of any way that he can go into court and have that determined? You do not know of any possible way in which he can get into court except when there is a violation of a constitutional right?

Mr. CLEMENTS. I do not know of any way unless it might be on a question of a claim for reparation, if he chooses to come before the commission instead of going into court for it; and in the Abilene case the Supreme Court held that he can not go into court when the rate itself is involved until it has been determined under the ruling of the commission.

The CHAIRMAN. Under the old law the shipper could come into court or might sue the railroad company in any court?

Mr. CLEMENTS. Yes. That was according to the apparent language of the law.

The CHAIRMAN. According as the court determined whether the rate charged by the company was reasonable or not; but under the existing law the shipper can not go into court and have the court determine whether the rate that he is charged is reasonable or not. He must come into your commission, as I understand it?

Mr. CLEMENTS. I understand that to be the present law and the decision of the Supreme Court.

The CHAIRMAN. Is there any other question that any gentleman would like to ask?

Mr. RICHARDSON. There are some questions I would like to ask the judge about the opinions he has been giving in the last few minutes concerning the suspension of the rate. As I understand, the law now is, under the Hepburn law, that the common carrier has got to give thirty days' notice of any proposed change in its schedules, one or more, and the commission has no authority to suspend that rate or any other rate except when a complaint is made by some one and the commission declares it to be unreasonable. This is additional authority that this bill gives the commission, if it becomes a law, to suspend the rate. Now, do you believe that it is a good policy to

take from the common carriers of the country the power and right to initiate rates?

Mr. CLEMENTS. Well, I think it is certainly a reasonable thing to do to them, and a necessary thing to do in behalf of the public—to hold in abeyance that increase of rate until its reasonableness can be settled. I do not quite agree that that is initiating the rate. It is simply holding that rate then made in statu quo, and when they ask to increase it asking for the reason for it.

Mr. RICHARDSON. That is what I wanted to get information from you about. Is not that in effect practically giving to the Interstate Commerce Commission the authority to initiate rates, because all of the rates that railroads adopt or agree upon or file with the commission would be or should be sooner or later subject to that rule or power of the commission to suspend it for the time being?

Mr. CLEMENTS. Not any more so than you authorize the commission now upon complaint and hearing to authorize the future rate. That goes on from time to time now. I do not understand that the holding in abeyance of a proposed increase is any more the fixing of a judicial rate upon the carrier than upon the hearing to condemn the existing rate and prescribe a lower rate.

Mr. RICHARDSON. You do not contend, when the railroads can not initiate a rate without the approval of the commission, that this is giving the railroads the power to initiate the rate?

Mr. CLEMENTS. They have the power to initiate all the rates now.

Mr. RICHARDSON. That is modified now, as I understand it, by the power given to this commission to suspend the rate.

Mr. CLEMENTS. Well, I think the suspension in this case is simply to hold things where they are until you find out what ought to be done.

Mr. RICHARDSON. Now, I want to ask you another question: Do you believe that the physical valuation of the railroad presents a fair and reasonable criterion by which to regulate rates?

Mr. CLEMENTS. I think it would greatly help any tribunal dealing with rate questions to judge properly by. It would be a material help, but it would not be the sole consideration. It would not be as controlling ordinarily as it would be when you get into one of these controversies in court. When you get into court the first thing that is alleged is that this property is worth so much, and that it owes so much in bonds, and that it takes 65 or 70 per cent of its gross earnings to pay the operating expenses, and it has so much more to pay as taxes, and so much more for the interest on the bonds, and there is but little left to the stockholders, and therefore an appeal is made to the court for an injunction against the reduction of the rate. And right there, immediately, whoever does that must pass upon that question, and must begin to look to the value of the property. The Supreme Court has said that they may earn a fair value on the investment. Now, what is the investment?

The CHAIRMAN. Judge, will it be satisfactory to you to return at 2 o'clock this afternoon?

Mr. CLEMENTS. Yes.

The CHAIRMAN. I think several of the members of the committee desire to interrogate you further.

Then, without objection, we will take a recess until 2 o'clock this afternoon.

(Thereupon, at 11.55 o'clock a. m., a recess was taken until 2 o'clock p. m.)

#### AFTERNOON SESSION.

Pursuant to recess taken, the committee reassembled at 2 o'clock p. m., Hon. Irving P. Wanger in the chair.

Mr. WANGER. Mr. Reporter, here is the brief of Mr. Bentley W. Warren, attorney for the Boston and Northern Street Railway Company and the Old Colony Street Railway Company, for printing in the record:

#### STREET RAILWAYS AND INTERSTATE COMMERCE.

*Street railways should not be included among the transportation agencies subject to the act of Congress to regulate commerce, approved February 4, 1887, as amended.*

At the outset of any discussion of this proposition it is necessary to define what is meant by a street railway. In Massachusetts our statutes distinguish three different classes of railroads: (a) The ordinary railroad, (b) the street railway, and (c) the electric railroad.

The statute definitions are as follows:

"Railroad" means a railroad or railway of the class usually operated by steam power.

"Railroad corporation" means the corporation which lays out, constructs, maintains, or operates a railroad of the class usually operated by steam power.

"Street railway" or "railway" means a railroad or railway, including poles, wires, or other appliances and equipment connected therewith, of the class operated by motive power other than steam, and usually constructed upon the public ways and places.

An electric railroad is "a railroad or railway \* \* \* of the class operated by electricity or by any power other than steam \* \* \* and constructed wholly upon private land purchased or taken by said company under the provisions of this act; or constructed partly upon such private land so purchased or so taken by said company and partly upon public ways and places, but at least one-half of which is constructed upon such private land."

The electric railroad in Massachusetts, as defined above, is, as respects the powers and liabilities of the corporation operating it, for many purposes a railroad operated by electricity.

The test laid down in Massachusetts statutes for recognizing a street railway, viz. a railway usually constructed upon the public ways and places, is one approved by experience, and will be found, upon investigation, to be consistent with practical considerations. The purpose of such railways is essentially different from the purpose either of commercial railroads or of electric railroads.

A street railway is designed to meet local need for short-distance transportation. It represents merely an improved use of the streets and highways themselves. Its accommodation of the public is confined almost entirely to carrying from one point to another point in a public highway passengers who, but for the street railway, would either be compelled to walk or drive between the same points. It receives and discharges its passengers within the limits of the highway, stopping for both purposes at frequent intervals. A street railway either performs no business in the carriage of goods and merchandise, or when it does perform such carriage, does so in an incidental and quite subordinate way to its primary function of the transportation of passengers. Such carriage of goods as is either done or is capable of being done upon a street railway is strictly analogous not to the freight business of railroads, but to the light teaming performed in cities and towns by teamsters and by local trucksters, or, as they are called in Massachusetts, city or suburban expressmen. Business of this sort done upon street railways would otherwise be done with wagons upon the highways, and not by freight cars upon the regular railroads.

Not only is the kind of business done upon street railways so different from that done upon railroads as to make the application of interstate-commerce regulations to the former unnecessary, but the physical differences between the two classes of carriers render impossible such a relation between them as can ever raise street railways to sufficient importance to justify the application to them of federal control. It is not practical to operate over the ordinary street railway standard railroad cars.

The requirements of ordinary highway traffic involve the use of the same portions of the street both by street railway cars and other vehicles. This necessitates as a result the use of special kinds of rails. The flange of the standard railroad car wheel is too deep to run upon the tram rail of the street railway. Both the tread and flange of the standard car wheel are too broad and heavy to be run upon the ordinary grooved rail which is so generally prescribed by municipal authorities for the use of street railways. The "special work" of street railways—that is, the curves and switches—are particularly unfit for the use of either standard passenger or freight cars. The grades of the ordinary street railway, following as such railways usually do the grades of the highways in which they are built, are not adapted for hauling the heavy cars usual upon commercial railroads.

In all these respects street railways differ essentially from the so-called interurban electric railways which are now becoming common in some parts of the United States. These interurban railways are, as pointed out by Mr. Lincoln (p. 465 of the report of the hearings before the Interstate Commerce Committee), practically railroads operated by electricity. There may be good reasons for including such interurban railways within the federal legislation to regulate interstate commerce; indeed, there is probably no good reason for not so including them. The construction of their tracks and road bed, the character of their rolling stock equipment, both passenger and freight, the extent of their lines, the sort of business they aim to do, are all similar to the corresponding features on the ordinary railroads. The difference in motive power is incidental and not essential. Even the name "interurban" applied to such railways is almost misleading. Such a line as the projected one mentioned by Mr. Lincoln, from St. Louis to Kansas City, is "interurban" only in the sense that the Boston and Albany Railroad is interurban, in that its termini are in two cities.

The distinction between these so-called interurban electric railways, which are really railroads operated by electricity, and the ordinary street railway is almost as marked as that between the street-railway system in New York City and the New York Central Railroad or the Pennsylvania Railroad. Unfortunately, statistics are not available to show what proportion of the 38,000 miles of electric lines referred to by Mr. Esch (at page 466 of the record of hearings before the committee) represents electric railroads and what proportion represents ordinary street railways. When we remember, however, that the little State of Massachusetts alone contains over 2,800 miles of the 38,000 in the whole country and that all of those 2,800 miles are used in conducting strictly a street railway business, it is apparent that much the larger part of the 38,000 miles in the whole country are probably similarly employed.

#### STREET RAILWAY SITUATION IN MASSACHUSETTS.

Eighty-one street railway companies reported to the Massachusetts Railroad Commissioners for the last fiscal year. Fifty-nine of these companies were operating their own railways. The total mileage operated was 2,869 miles, of which all but 250 miles were located, maintained, and operated in the public highways. While the statutes of Massachusetts, as previously pointed out, have provided for the construction of electric railroads, no railroad of that kind has yet been built in the State. The freight business done upon the Massachusetts street railways is so insignificant as to be negligible. The 81 companies earned in the aggregate in the year 1909, \$31,956,007 from the following sources: Revenue from passengers, \$30,943,994; revenue from mails and merchandise, \$297,816; revenue from tolls and advertising, etc., \$714,197.

Bearing in mind that the primary object for the federal regulation of interstate commerce was to eliminate abuses and introduce uniformity in the transportation of merchandise, there is surely little reason to load down the Interstate Commerce Commission with the oversight of the Massachusetts street railways. The figures show that all these companies in Massachusetts derive

less than 1 per cent of their entire earnings in the transportation both of mails and merchandise. Their receipts from that source were actually less than half what they were from miscellaneous items of tolls, from advertising in the cars, etc.

It is confidently submitted that the negligible amount of freight business done by the street railways in Massachusetts is undoubtedly true of similar street railways elsewhere; that is, street railways in other parts of the country constructed as are those in Massachusetts—chiefly in the highways. The total number of companies—street, suburban, and interurban—based upon the proposed census report on street and interurban railways, is 1,236, and their total miles of track, measured as single track, is 34,404 miles. The total number of passenger cars is 70,016, and of all other kinds of cars, 13,625. Their total earnings from operation are \$418,187,858. Their total par value of outstanding capital stock is \$2,097,708,856, and their total outstanding funded debt, \$1,877,063,240. Their total net capitalization, based upon the same source of information, is \$3,400,107,899, giving a net capitalization per mile of track of \$100,495. That these capitalization figures are probably much in excess of the actual investment in the companies is apparent from the net capitalization per mile of track for the whole country of \$100,495. In Massachusetts, where the issue of securities by street-railway companies is strictly supervised, the amount of the capital stock at the end of the last fiscal year was \$80,738,880, and the net debt was \$75,939,932, making a total capitalization of \$156,668,812, and the net capitalization per mile of track in Massachusetts is only \$54,607, or only a little more than half that for the country as a whole.

The number of companies—street, urban, and interurban—in the so-called "Red Book, American Street Railway Investments, Edition of 1909," greatly exceeds the number given above, as based on the proposed census report. The Red Book list shows 1,603 operating companies, and 603 underlying or controlled companies; total of 2,206. The following table shows, both on the basis of the proposed census report and on the basis of the Red Book data, the small size and comparative unimportance of the average street railway (including also in the computation the interurban railways) in the United States:

*Statistics of the average street, suburban, and interurban railway.*

	On basis of proposed cen- sus.	On basis of number of companies listed in Red Book.
Miles of single track.....	27.8	15.5
Number of passenger cars.....	56.6	31.7
Number of other cars.....	11.02	6.1
Earnings from operation.....	\$338,339.69	\$189,568.38
Authorized capital stock.....	\$2,029,170.17	\$1,186,823.99
Authorized bonds.....	\$1,876,392.26	\$1,061,324.04

EFFECT ON INTERSTATE COMMERCE COMMISSION.

Senator Cullom, in reporting the original act to regulate interstate commerce, said, in explanation of its scope:

"The bill is not intended to affect the stagecoach, the street railway, the telegraph lines, the canal boat, or the vessel employed in the inland or coasting trade, even though they may be engaged in interstate commerce, as it would do if it was made to apply to all common carriers engaged in interstate commerce, because it is not deemed necessary or practicable to cover such a multitude of subjects."

What Senator Cullom said, looking to the future, as to the lack of necessity and the impracticability of covering such a multitude of subjects, is amply justified by the actual situation now existing. The effect of adding to the reports which the law already requires to be made to the Interstate Commerce Commission, reports of street railway companies from the number of 1236 up to, possibly, 2,206, of an average importance no greater than shown in the schedule above, must be apparent. The Interstate Commerce Commission has itself twice requested Congress to relieve it from the duty of supervising street-railway service in the District of Columbia, a duty imposed upon the commis-

sion by special act. Is anything to be gained by adding to the already heavy duties and responsibilities of that commission the supervision of this vast number of companies, engaged for the most part in conducting a purely local business, confined, so far as the Massachusetts figures show, as to over 99 per cent of its volume, to the carriage of passengers, and already in almost every State satisfactorily and thoroughly supervised and regulated by local tribunals easily accessible to the public affected and familiar with the needs of that public?

Notwithstanding the explicit language of Senator Cullom in reporting the original act to regulate commerce, the Interstate Commerce Commission has twice held that the language of that act included street railways. (*Willson v. Rock Creek Ry. Co.*, 7 I. C. C. Rep., 83; *West End Improvement Club v. Omaha and Council Bluffs Ry. and Bridge Co. et al.*, 17 I. C. C. Rep., 239.)

In the last-cited case, however, Commissioners Prouty, Knapp, and Cockrell concurred in the decision only on the ground of the decision in the earlier case, Mr. Commissioner Prouty saying on this point—

"In *Willson v. Rock Creek Railway Co.* (7 I. C. C. Rep., 83) I expressed the opinion that the act to regulate commerce did not apply to ordinary street railways. I still entertain the same opinion, but a majority of the commission thought otherwise in that case, and for the twelve years since we have uniformly adhered to that holding. It seems to me that this should be accepted as the settled law for this body until reversed by a majority of the commission or disapproved by a court of competent jurisdiction. I therefore concur in the disposition of the case. Knapp, chairman, and Cockrell, commissioner, instruct me to say that they also doubt upon the point of jurisdiction, but concur for the reason above stated."

If the commissioners were right in holding that the present act applies to street railway companies, the question may be asked whether it does not apply only to such as are, in fact, engaged in interstate commerce, and whether, therefore, the vast majority of such companies would not still be solely subject to local regulation and control. In Massachusetts, for example, there are only about 15 points where a street railway either crosses the boundaries between Massachusetts and any one of the 5 neighboring States, or connects at the boundary lines with street railways operating in the neighboring States. To one unfamiliar with the decisions of the Interstate Commerce Commission and of the courts it would seem that the federal jurisdiction would apply only in these 15 instances, and that the great majority of the 81 street railway companies in Massachusetts would still remain subject only to the jurisdiction of the Massachusetts laws and tribunals. Such, however, is not the fact.

Although the Massachusetts street railways engage to such a slight extent in the carriage of merchandise, their receipts from that source being only 1 per cent of their total receipts, nearly every company does, for the convenience of its patrons, engage somewhat in transporting small packages of merchandise. Not infrequently such packages are carried on the front platform of an ordinary passenger car. If one such package is shipped from a point without Massachusetts by a street railway, or, for that matter, by railroads or by one of the large express companies, destined for delivery to a consignee upon the line of a local street railway in Massachusetts, no part of which may be within 20 miles of the state boundary, that local company is engaged in interstate commerce. The cases seem to be clear on this point, and the only method of taking such companies out of the jurisdiction of the Interstate Commerce Commission, and relieving that commission, already overburdened with more important business, from the necessity of supervising the accounts, the accidents, the safety appliances, the hours of employees, and the charges of the company must be either a declaration by Congress that legislation is not to include such companies, or a decision by the United States courts that such companies are not included, as Senator Cullom evidently believed they were not, within the terms used in the federal acts to regulate interstate commerce.

In *Leonard v. Kansas City, etc., Railway Company et al* (13 I. C. C. Rep., 573) the commission, after reviewing all the authorities, held that any carrier, even though its operations are wholly confined to a particular State, becomes subject to the regulating power of commerce if it engages in the slightest degree in the transportation of passengers or property destined from or to points without the State, and that since the Hepburn amendment of June 29, 1906, such a carrier is liable to the federal regulation, although the carriage

is not done in a particular case under any common control, management, or arrangement for a continuous carriage.

In *The Daniel Ball* (10 Wall., 557), a leading case on the subject, the Supreme Court said:

"The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State and some acting through two or more States, does in no respect affect the character of the transaction." (See also *Rhodes v. Iowa*, 170 U. S., 412; *U. S. v. Colorado North-western R. R. Co.*, 157 Fed. Rep., 321; *Same v. Same*, 157 Fed. Rep., 342.)

In the last-cited case the circuit court of appeals for Colorado held that a narrow-gauge railroad was subject to the penalties imposed by the safety-appliance acts, although it operated only a short line wholly within the State of Colorado, and transported goods only for an independent express company, the court holding, at pages 343 and 344:

"The railroad company did not receive, issue a bill of lading for, handle, or deliver the package, except as it received it in its car and carried it for the express company in conformity to the practice which has been described. \* \* \* The transportation by a common carrier by railroad of articles of interstate commerce for an independent express company is engaging in interstate commerce by railroad as effectually as their carriage by it for the vendors or consignors."

I have said nothing about the probable conflict between the state laws and regulations and federal laws and regulations. That such a conflict exists and will result in unavoidable confusion and dissatisfaction in many of the States is undeniable. This is peculiarly true of States like Massachusetts, which supervise their street railways very strictly and subject them not only to minute control by state officials, but also in many respects, noticeably in the matter of engaging in the transportation of merchandise, to the control and supervision of city and town officials. If good reason exists for federal control of these local street railways, the objection that this conflict will exist is not entitled to weight. If, on the other hand, there are not strong reasons for extending or continuing the jurisdiction of the Interstate Commerce Commission over such street railways, this objection, it is submitted, should influence Congress against including them within that jurisdiction. If the interests of the traveling and shipping public of the nation so require, the desires, preferences, and opinions of the citizens of Massachusetts respecting the use of their highways and the transportation of persons from one point to another on those highways and the sort of agencies which may engage in such transportation and the extent to which they may so engage not only must but should yield to the national necessity. If the necessity exists, the views of Massachusetts respecting the use of its highways, although those views are crystallized in legislation running back for two centuries or more, must be modified. Before Massachusetts, however, is called upon to submit to this federal interference with the control of its highways and the uses to which they may be put, the people have the right to ask Congress seriously to consider whether the necessity has arisen or is likely to arise.

It is respectfully submitted that the bill introduced by Mr. Townsend (H. R. 17536), now under consideration by the Committee on Interstate and Foreign Commerce, should, if enacted, contain a provision subsequential to the following effect:

"The terms 'railroad corporation,' 'common carrier,' 'carrier,' and 'transportation company' as used in an act to regulate commerce, approved February 4, 1887, as amended; an act to promote the safety of employees and travelers upon railroads, approved March 2, 1893, as amended; an act requiring common carriers engaged in interstate commerce to make full reports of all accidents to the Interstate Commerce Commission, approved March 3, 1901; an act concerning carriers engaged in interstate commerce and their employees, approved June 1, 1898; an act to promote the safety of employees on railroads, approved March 30, 1908; an act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, approved May 30, 1908; and in this act shall not apply to nor include a street, suburban, or inter-urban railway corporation owning and operating a railway of the class operated by electricity or by any motive power other than steam and constructed for at least one-half its length upon public highways and places, and the word 'railroad' as used in any of said acts and amendments thereof shall not apply to nor include a railway of the class herein referred to."

## II.

*If there is sufficient reason to include street railways within the act to regulate commerce, they should not be denied any of the benefits of that legislation.*

Although the freight business done upon street railways is, it is believed, negligible, always keeping in mind the distinction between street railways which are operated on highways and interurban railways, which are railroads operated by electricity, these street railways and such persons as may ship merchandise over them should not be denied the benefits intended to be conferred by section 9 of H. R. 17536. That section now contains the following exception:

"The commission shall not, however, establish any through route, classification, or rate between street, suburban, or interurban electric passenger railways and railroads of a different character." (Page 18, lines 20-23.)

If any good reason exists for this exception, it must be that the business done upon these railways is so different from that done upon railroads of a different character as to make the law applicable to the latter inapplicable to the former. If, however, such railways are to be included within the act, and Congress is thereby to adjudge that the interests of the traveling and shipping public require them to be included, Congress should see to it that that public is enabled to utilize to the fullest extent such facilities as are or may be, under federal regulations, furnished by the street railways. If the street railways and their business are to be wrested from their primary purpose of the local transportation of passengers, and, to a very limited extent, of merchandise, and brought under federal control, that control should be made effective. If there is any public demand for that federal control of street railways, and the demand is to be adequately met by legislation, the power to exercise the control should be placed in the hands of federal authorities, and not made dependent upon the voluntary act of the "railroads of a different character." It is respectfully submitted that section 9 contains among its provisions the chief reason and justification for any federal regulation of interstate commerce. If that reason and justification apply to street railways, the provisions of the section should be equally operative, both for them and against them, as for and against railroads or any other class of carriers. It is therefore respectfully submitted that the exception quoted above, and appearing in section 9, should be omitted from the bill.

## III.

*If street railways are to be included or continued under the jurisdiction of the Interstate Commerce Commission and the several acts of Congress to regulate commerce, it is submitted that they should be excepted from the provisions of section 13, as they already are from the provisions of section 12, in the bill under consideration, H. R. 1756.*

Without the exception contained in the proviso of section 12 (lines 15-18, p. 26) an intolerable situation would be produced, certainly in Massachusetts, and probably in many other States. As already pointed out, under the decisions of the federal courts practically all the street railways are, although to a very slight extent, engaged in interstate commerce. Section 12, without the proviso, would prevent the consolidation of two or more such companies in Massachusetts, for example, although such consolidations are authorized under the general laws of that State. Without the proviso the parties to any such proposed consolidation would, to protect themselves against the penalties of the acts to regulate commerce, be forced, although they had complied with all the requirements of the laws of Massachusetts, to apply to the proposed court of commerce and to submit to the delay and expense involved in such an application.

The public policy of Massachusetts, as must be well known to the Massachusetts members of the Committee on Interstate and Foreign Commerce, has long favored, first by special acts and now for more than twelve years by general acts, the merger and consolidation of street railways. This policy has resulted to the general satisfaction of the public and in greatly improved service and lessened charges for transportation. Experience has shown that it is far better to have one operating company in a city like Boston, or Worcester, or Springfield, than several struggling and competing companies. The consolidation of the small companies has been uniformly encouraged in Massa-



chusetts, subject to the supervision of the railroad commissioners, who are required to pass upon each proposed merger.

The prohibition in section 13 of the proposed act against the issue of stock and bonds will be similarly objectionable, unless the corporations operating street railways, as that term is defined in the Massachusetts laws, are excepted from its provisions. In the first place, the provisions of section 13 are entirely superfluous in many States, as, for example, Massachusetts and New York, where the issue of securities, whether stock or bonds, is carefully supervised and regulated. In the second place, that section, unless street railways are excepted from its scope, will, on the one hand, greatly add to the business of the Interstate Commerce Commission, and, on the other hand, seriously delay the necessary financing of the needs of the street railway corporations.

The committee probably does not appreciate the relative insignificance of the issues of stock and bonds by street railway companies. In the year 1906, the railroad commissioners of Massachusetts passed upon 15 separate applications of this sort, varying in amount from \$20,000 for the smallest to \$500,000 for the largest issue. In 1907 the same commissioners passed upon 25 applications, varying in amount from \$10,000 to \$1,010,900, with a single exception, that of the Boston Elevated Company, which was authorized to issue \$5,800,000. In 1908 the commissioners passed upon 12 applications, and in 1909 upon 11.

Many of the issues of stock by these companies are for the purpose of exchange for the stock of other companies with which they are consolidating. In such cases, the amount of stock which can be issued is regulated by the Massachusetts statutes, and must be approved by the Massachusetts railroad commissioners. All these cases would have to be taken before the Interstate Commerce Commission under section 13 of the bill, unless street railway companies are excepted from the provisions of that section.

In the case of an issue of bonds it is quite usual to sell them at some discount. Many companies prefer to issue a bond at a low rate of interest, although at a discount, than at a higher rate of interest, in order to make the sale at par. All these issues would likewise have to be submitted to the Interstate Commerce Commission.

When the committee recalls the fact that there are somewhere between 1,286 and 2,206 street, suburban, and interurban railway corporations in the United States, they may be able to determine which of these alternatives the Interstate Commerce Commission will adopt—either to make the supervision of the proposed issue purely perfunctory, or subject the corporation and the public desiring the expenditure of the proposed capital to an indefinite delay. Certainly no one would expect that nine human beings, charged with the supervision and regulation of the interstate commerce conducted upon 232,000 miles of steam railroads, would have much time or energy to pass upon the necessity or reasonableness of proposed stock and bond issues by this great number of street railways.

BENTLEY W. WARREN,  
*Attorney for Boston and Northern Street Railway Company  
and Old Colony Street Railway Company.*

Mr. WANGER. Now, Mr. Commissioner, will you proceed?

### STATEMENT OF HON. JUDSON C. CLEMENTS, MEMBER OF THE INTERSTATE COMMERCE COMMISSION—Concluded.

Mr. CLEMENTS. Mr. Chairman, at the time the committee adjourned or took a recess, Judge Richardson, of Alabama, had asked a question in regard to the use of valuation in connection with this matter of determining rate questions, and I had answered in a general way that I thought valuation was a very pertinent matter in the inquiry as to whether rates fixed would yield, according to the regular rule of the court, a return fair to the investors in the property, having reference to the fair value of the investment. I think it is impossible for any conscientious judge, court, or commission to get entirely away from what the people who built a railroad have put

into it, and what the property which they have built is fairly worth. From time to time, when you are confronted with the question and want to deal with it intelligently and conscientiously, you can not make its solution depend altogether on how much money was put into the road, for that money might have been improvidently spent. But a valuation of the property, the fair and reasonable value of it at the time, is a matter of great importance in considering the reasonableness of these rates from the standpoint of confiscation.

Mr. RUSSELL. Judge, should it be the value at the time of the valuation or at the time of the building of the road?

Mr. CLEMENTS. Well, that opens up the question of what you should consider. Of course, if you take into account the unearned increment and increased value of the terminal properties that were placed in there and secured thirty or forty or fifty years ago, and have been surrounded since that time by a great city, where the values have gone up, and if you add to that the difficulty and expense of procuring equal facilities from private property owners or under condemnation proceedings, where the city is built over the property that way, it would swell the value of that property a great deal. I hardly think it is a sound or fair basis that the full amount of increased value by unearned increment should be taken in the valuation. But it should be considered together with a lot of other elements in connection with the same question. Neither would I say, on the other hand, that those things ought to be altogether ignored. But in any event it will be found a helpful thing to any tribunal dealing with this kind of a problem to turn to what is the real value of the railroad, either when originally constructed or at the present time—either way. Of course it should not be final or conclusive, and it would not be the only consideration.

In connection with that is the question of regulating securities. I would not for a moment be understood as advocating the prohibition in the law against the sale of stocks and bonds at less than their par or face value when you are entering upon the construction of a new road. Money must be obtained to build it. It may be that it can be obtained from the people who are to furnish it only by taking these securities on an uncertain basis, where they might have to wait ten years for the building up of the business before there would be any earnings at all. And I do not think it would be quite fair, and I think it would tend to hamper the development of railroads in the undeveloped parts of this country, to make any such conclusive rule as that. But, on the other hand, take a gilt-edged property 35 or 40 or 50 years old, like the Alton was a few years ago, paying 8 per cent annually to the stockholders, having a capitalization of all kinds of about \$34,000,000. Then the majority of this stock was obtained by four men, and within a few years the capitalization was increased to \$114,000,000, the bonds being sold to three or four men at 65 cents on the dollar, and they selling them to themselves, or taking them themselves.

Some of those bonds turned up in a little while in one of the great New York life insurance companies which had paid 96 for them. They had a much greater value than that at which the promoters took these bonds over to themselves. The net outcome was that the road which for thirty-five years, under the management of Mr. Blackstone, the president, had been paying 8 per cent and upward annually

to the stockholders, the value of the stock being away up beyond par and its credit being unexcelled by that of any road in the country, was capitalized at \$114,000,000 instead of \$34,000,000, and only \$18,000,000 of that great overcapitalization was devoted to the improvement of the property, while the remainder of the excess capitalization was divided among themselves by the promoters. Mr. Blackstone stated in his last report before these transactions took place that he had, during the certain period of time he mentioned, perhaps twenty or twenty-five years, been able to reduce the freight rates nearly one-half what they had been, and had reduced the passenger rates as well as the freight rates. He stated that in his report, and I have no doubt in substance it was true. And yet the road was paying more than 8 per cent dividends, and its credit was fine. When the reorganization was finished up, the road had a capitalization of \$114,000,000 instead of \$34,000,000, and the profits of that recapitalization were absorbed by those promoters, first by issuing these bonds and taking them over to themselves at 65 cents on the dollar, and then disposing of a large quantity of them a little later at 96. As I say, only about \$18,000,000 from this reorganization went back into the property for improvements, and the balance of it was left as a load upon the property, to be carried by this and future generations, in order to make good the interest and the fixed charges upon these obligations and the money that was put into the pockets of the promoters, who go off and build castle homes with it and proceed to add additional millions to those already obtained.

Now, it is that kind of thing that ought to be controlled, I think, by statute for the sake of the good name of the American people, as well as for the protection of the minority stockholders and investors by trustees. How many times we have all seen people in the capacity of trustees looking out for the benefit of the widows and orphans for whom they are acting to get the best investments and safest investments. They are always looking for something safe. When a fine property like this, which has become a splendid piece of property, is developed and maintained, it becomes a most attractive bait for promoters to secure a majority of the stock and load it down and endanger its credit and endanger its ability to meet its obligations in the future and fix up a basis by which every time the rates are called in question they can go to the court and state what the fixed charges are—first, the operating expenses, and the taxes, and the money necessary to meet the interest on these obligations, which are binding upon the road. If you say they are water and illegal because the proceeds were not put into the road, and that the commission and the courts may ignore them, then what does the representative of the widow and orphan say? They say:

You stood by: you had no law forbidding this to be done; it has been done according to law, not in violation of the law; and now will the public stand for a decision which will say that the whole thing may be disregarded when the law did not forbid it, and when to disregard it is to make worthless or reduce the value of these investments which the people have put their money into? I do not think the Congress or the courts or the people of this country as a whole would stand for any such result as that.

Mr. KENNEDY. The substance of it all is this: The people of this country have been represented at all times in the legislature, and the buyer of these watered stocks and bonds is the innocent purchaser,

under no obligation to look into those things, while the public is in no sense innocent. The public slept upon its rights while these things were doing, and the owner of the stocks and bonds stands higher now in equity than do the people?

Mr. CLEMENTS. Well, I think, looking at it from the standpoint of natural justice and conscience, that is what the great body of the people would say—that if these things are to be the loss should not be borne by the few people who have innocently invested in them and owned them, inasmuch as the public has had the power ever since the Constitution was framed to regulate these matters.

I am sorry Judge Richardson is not present now, because he asked a question the other day indicating that in his opinion this was wholly irrelevant to the question of rates. The importance of this matter is seen when a controversy arises on rates made by a commission, whether state or federal, and there is an effort on the part of the carriers to enjoin the enforcement of the rates. The first thing that a good lawyer representing a railroad does is to show how much gross earnings are taken by the operating expenses—65 or 70 per cent in most cases of the gross earnings go that way—and then taxes and other necessary claims upon the earnings, and then the interest necessary to meet these bond obligations and notes that have been put upon these roads. Then he is able to demonstrate that the amount available for payment of dividends on stocks is usually comparatively small. Then he has a clean-cut basis upon which to say, "When you reduce this rate, it does not leave enough for the stockholder and investor." And why? Because it has been diminished by the money taken out of the earnings necessary to meet those obligations that have been put upon the property—not to build it and not to make it better and not for any legitimate carrying purpose, but simply to get a great fund to divide out amongst the promoters, who take it away as private gain.

Mr. WASHBURN. Well, Judge, if the Alton road was the only road, for example, operating between Chicago and St. Louis, I would be impressed by what you say, but there are perhaps half a dozen competing lines between those two points, and, that being so, how do the peculiar vicissitudes of the Alton affect the freight rates, for example, between Chicago and St. Louis, in view of the fact that there are so many competing lines between those points?

Mr. CLEMENTS. All of them contend they should have substantially the same rate. As a matter of fact, the rate must be about the same.

Mr. WASHBURN. That being so, the vicissitudes of that particular road would not have much to do or much effect upon the rate between the two points, would they?

Mr. CLEMENTS. That depends upon whether all the rates between the two points are too high.

Mr. WASHBURN. In the absence of a pooling arrangement competition would naturally bring those rates down?

Mr. CLEMENTS. There is now the practice of agreeing upon rates between all important points. It is not an actual pooling of the freight, except as it may be distributed by the rates they impose.

Mr. WASHBURN. You mean they are thinking now to have that practice recognized by this bill?

Mr. CLEMENTS. Yes.

Mr. RUSSELL. The fact that the other roads might follow the example of the Alton shows the necessity of such legislation, as illustrated in the case of the Alton?

Mr. CLEMENTS. Yes. These bonds run from thirty to forty or fifty or sixty years, and the railroad has no way of getting earnings to pay fixed charges and get dividends except out of the people who pay rate charges. Of course they may refund from time to time and carry it along through a course of years, but ultimately it is an obligation that must be met some time, and it must be met out of earnings. It may be that the rates were too high when this thing was done, and there would have been an opportunity to reduce them not only on the Alton road, but also on the competing roads. I do not undertake to say whether they were or not. But Mr. Blackstone shows in his report that while the road had been for twenty-five years paying 8 per cent dividends, the freight rates were reduced one-half. Now it may be that he could have continued to do the same thing and that ultimately his road could have dropped rates still further.

Mr. WASHBURN. That was not a voluntary act upon his part? I suppose the reduction of these rates was brought about very largely by competition?

Mr. CLEMENTS. I suppose so.

Mr. STAFFORD. May I offer this observation? The Alton road had been for years what was known as a "cutthroat" railroad, seeking to extend and enlarge its traffic by reason of lower rates, so as to command its share of the total traffic between St. Louis and Chicago.

Mr. CLEMENTS. Yes. That illustrates the very point I was talking about.

Mr. STAFFORD. I thought that would emphasize the fact that when they would be prevented from higher capitalization and watering of stocks the competition between roads would thereby act as a means of leverage in lowering rates.

Mr. CLEMENTS. Yes; undoubtedly. These cutthroat-rate wars are a disadvantage to the public in some respects. They are an inconvenience, but it can not be denied that through a long period of time they have had a forceful effect in bringing down the general level of rates to a point where normal conditions would allow business to be done on the lower rate.

Mr. RUSSELL. Judge, suppose the Interstate Commerce Commission should be clothed with the right to supervise the issuance of securities by the transportation companies. How far would that conflict with the powers vested in the state commissioners to supervise the issuance of those securities? In Texas, you know, we have a state commission, and have had since 1894 or 1893. Under Governor Hogg's administration that state commission was clothed with the right to supervise the issuance of bonds and stocks of various kinds, and particularly of carrying corporations. How far would the power vested in the Interstate Commerce Commission conflict with that vested in the Texan commission?

Mr. CLEMENTS. I do not know how far, Mr. Russell, the limitation proposed in these bills would in any way conflict with the Texas law with regard to railroads in Texas. I have not really investigated it to see if there would be any conflict at all.

Mr. RUSSELL. For instance, take the Missouri, Kansas and Texas Railway Company. It is domesticated now in our State. We require the railroad companies operating in our State to take out state charters. It is known as the Missouri, Kansas and Texas Railway Company until it strikes our border line, and then it becomes the Missouri, Kansas and Texas Railway Company of Texas. Now, suppose the Texas railway commission should say that corporation can issue bonds to the extent of \$60,000 per mile, and suppose the Interstate Commerce Commission should say it should issue them only to the extent of \$30,000 a mile. Would not the decision of the Interstate Commerce Commission control?

Mr. CLEMENTS. I have not had time to work it out to see whether or not there would be an actual conflict, according to the scheme here, that the commission should certify as to the facts necessary there in order to authorize an issue of stocks and bonds. But I presume that the law would operate in a way so as not to be in conflict with the state law. It would be permissive, and if it was a state charter and a state corporation it might be that it could not go beyond the authority of the State. But I really confess that I have not undertaken to work that out and see whether it can be done without conflict or not.

Mr. WASHBURN. Let me put this case to you: The New York, New Haven and Hartford is chartered under three States, the States of New York, Massachusetts, and Connecticut. They have been asked to do certain things in the way of the issuance of securities under the laws of the State of Connecticut which are forbidden under the laws of the State of Massachusetts. Don't you think if this act we are considering were enacted into a law all of the States whose laws were less strict than this national act would have to conform to the national act, and those States where the laws are more exacting would still insist on enforcing their requirements?

Mr. CLEMENTS. I thought if these laws were passed, they could be made to harmonize in that way, and then the State could impose such additional restrictions as might be found necessary or advisable beyond those imposed by the United States Government.

Mr. WASHBURN. But no State could go beyond the restrictions required by the National Government?

Mr. CLEMENTS. Yes; that may be illustrated, I think, by the situation or the condition of court decisions before the interstate-commerce law was passed. At that time the question arose as to what was interstate and what was intrastate, and there is a line of decisions, I think, to the effect that where the Federal Government having jurisdiction of the matter has not exercised it, the state regulations would hold good and even apply to interstate business, but when the Federal Government did exercise it and went into that field, that was the rule. But I think the system of regulation can be made entirely harmonious upon the theory that the State may not authorize the issuance of stocks and bonds beyond what the Federal Government would restrict it to. Within those terms it might pursue a different rule.

Mr. RUSSELL. Wherever there was any conflict, would not the fact that the Constitution says that the Constitution shall be the supreme law of the land control the state authorities and all?

Mr. CLEMENTS. I think so.

Mr. STEVENS. Would it not be, Judge, that the effect of the act of Congress would be to restrict the authority? That is, we say this corporation can do business, providing it complies with certain conditions that we fix?

Mr. CLEMENTS. That is the theory in this bill, as I understand it.

Mr. STEVENS. While the State is the original authority, and the creator of these corporations, and fixes the conditions of their creation?

Mr. CLEMENTS. Yes; I think it can be worked out without any necessary conflict between these authorities, state and federal. But it must be remembered all the time that the provision in the Constitution of the United States conferring upon Congress the authority to control interstate commerce is unqualified and unconditional, and it was doubtless put there because it was seen during the existence of the old Confederation that it was impossible; just as impossible to have 13 or 47 States and separate sovereigns regulating these matters without conflict and injury to the whole as that they saw it was necessary to have one authority to fix import duties as well, instead of one State protecting its own industries against those of the other States. Otherwise there would be an eternal warfare, commercial and perhaps otherwise, and a few things, it was found, must be fixed by one government and not by 13 or 47, and this is one of them, conferred, doubtless, for the purpose of being exercised in the interest of the whole, so far as it relates to commerce among the States.

Now, just one more illustration of a particular instance. I refer to it, as I have done on some occasions before, not for the purpose of pointing out one road as being any worse than another, but because facts, as we have often heard it said, speak louder than words, and what has happened heretofore may happen again, and doubtless will happen again under the present law. A few years ago Mr. John W. Gates had obtained a majority of the stock of the Louisville and Nashville Railroad, and when knowledge of that fact came suddenly to Mr. Morgan, who was largely interested in the Southern Railway, or whose house was interested in it or represented those who were, he obtained at night an option from Mr. Gates, at his hotel in New York, for the stock of the Louisville and Nashville. The hearing before us indicated that Mr. Gates had begun to buy the stock at 108, its normal value at the time when he began buying it up, and the price went up and he finally paid perhaps an average of 125 or 130. He gave an option for it at 150 in sixty days. Within the sixty days Mr. Morgan had arranged with the Atlantic Coast Line management for the Atlantic Coast Line to take that Louisville and Nashville stock up, the majority of it at 150, the amount which Mr. Gates asked for it, and in order to do that the Atlantic Coast Line issued \$35,000,000 of bonds and \$15,000,000 of preferred stock, which was taken by the stockholders in that road, in that system; and with that money, with those securities, they obtained enough money to buy this stock. Without doubt there were handsome profits to Mr. Gates, ranging from the price paid, from 108 up to 130, and the price received, 150, upon these millions, and doubtless also a good compensation to Mr. Morgan's house for making this arrangement; but there was not, in consequence of it, a 10-penny nail or a car tie added to the property. That was not the purpose of the transaction. Mr. Morgan said they

did it because they did not regard Mr. Gates as a suitable or proper man to run the Louisville and Nashville Railroad.

The CHAIRMAN. Judge, there is a roll call progressing in the House. Are you through with your statement?

Mr. CLEMENTS. I was simply going to remark that that is an illustration of the necessity of controlling these matters.

Mr. RUSSELL. Mr. Chairman, I wanted to ask Judge Clements a question about the difficulty of obtaining the physical valuation of the railroad property.

The CHAIRMAN. Go ahead, then.

Mr. CLEMENTS. I do not think there is any practical difficulty about it. It will take some time and some money, but it can be done without doubt.

Now, Mr. Chairman, I do not wish to take the time of the committee unless there are some questions which gentlemen may desire to ask.

The CHAIRMAN. I think the committee will have to adjourn. There is a roll call in the House, and the Indian bill will come up right after that.

It is understood that these hearings will end to-day. If anybody else desires to present any suggestions we would be glad to have him present the same in writing.

Mr. RUSSELL. Mr. Mann, you have not pursued the inquiry made before dinner as to the Judge's opinion of the long and short haul, and neither have I. I would like to have his opinion upon that proposition.

The CHAIRMAN. Very well. He can give his opinion very briefly.

Mr. CLEMENTS. We have expressed the views of the commission, and those are my views. That is, if there is to be a change of the language, "substantially similar circumstances and conditions," or if that language is to be stricken from the fourth section, I should say that, while there should be some good reason for relieving the carriers from it, there ought to be some allowance made for the custom that has grown up under the law and recent decisions of the courts, where to reverse that matter all at once would involve quite a shock to some other places that have been enjoying the advantage of a short-haul rate for a long haul. That would be true with respect to the Southeast in particular.

The CHAIRMAN. You think that if that change is enacted into a law that it should not take effect for some time?

Mr. CLEMENTS. Yes. Where the carriers can avail themselves of having the matter considered and be relieved of the rule, they should be allowed to present the matter to the commission, and the commission should have ample time to investigate the situation in those territories so as to exercise what new power it might have in that respect in a conservative way, so as to bring about such changes as ultimately will have to be brought about by slight degrees, rather than bring them about suddenly.

Mr. KENNEDY. You spoke of giving the commission discretion to control that matter. We would have to define what discretion we would give to the commission. Have you thought about what definition would carry out substantially our public policy? I believe that to allow a foreigner to have a discriminatory rate over our own rail-



roads in the distribution of his products when we exclude our own people from that is revolutionary. It goes to the very fundamentals of the railroad service.

Mr. CLEMENTS. Well, of course, on that point I think there is a very great misunderstanding which appears to have gotten into the newspaper prints as to what the chairman of this committee and Mr. Knapp, the chairman of our commission, said the other day—that conditions under the present law were intolerable.

The CHAIRMAN. What was in the newspapers was not what was said in the committee, and it very seldom is.

Mr. CLEMENTS. We must look to the other end of that question also, from the standpoint of the people who raise great crops of wheat and corn and grain and cotton in the interior, for which this Government is seeking to give them markets abroad as well as at home. It is regarded by many as a great advantage to this country at large that our manufacturers and farm producers of cotton and grain and all these things shall be able to get rates that shall put them into the open markets of the world in competition with other countries of production for the surplus produced in this country; and while, of course, the manufacturer in this country insists that these things of foreign production ought not to be hauled in this country at lower rates than the domestic rates, the producers of grain in the interior demand a low export rate in order that their products may compete with the markets of the world in the production of the world.

I have not anything more to add to that than what the chairman of the commission said the other day. It is a great big question, and it runs directly into your tariff system. The commission said, in the old import case which has been referred to, that it modified the operation of the tariff law, and the Supreme Court practically said that was not a matter for the commission to consider; that it was a question of policy for the legislative branch to consider.

Mr. KENNEDY. The language "under substantially similar circumstances" took away from your commission all discretion to control that matter whatever?

Mr. CLEMENTS. Yes.

Mr. KENNEDY. So that the railroads have practically been free to make any sort of arrangement for foreign shipments that they chose?

Mr. CLEMENTS. That is about what it amounted to.

Mr. KENNEDY. And in exercising that discretion they have given to the factories that chanced to be built outside of this country any sort of discrimination they please, without control?

Mr. CLEMENTS. Yes. But when you undertake to forbid it at all and then undertake to qualify it, there is difficulty in fixing the rule of qualification. That is, they only seek to do it now, I suppose, in so far as is necessary to do it in order to permit these outside products to come in in some reasonable volume. Now, if you should limit it and say they could not charge a certain percentage less than a domestic rate, that would not be of any value to them unless it was low enough to permit the stuff to come in.

Mr. KENNEDY. The quarrel I have with the present situation is this: That along the Pennsylvania Railroad in my district there are a great number of factories that established themselves and went into business along that line of railroad because they thought they would

have available that line of railroad, which would be their natural ally in distributing their wares in this country. Now, they get away from any sort of competition by the practice that they are engaged in. They contend that they are not compelled to be our ally in our competition with factories that have been built abroad for the manufacture of pottery by American capital. They would have to be our ally if those factories were built in this country along some other line of railroad, but because, forsooth, they are not in this country, but are in France or Germany, they can make a lower rate for them, practically excluding us from the markets of the Middle West in order to get their trade. Now, it seems to me that the railroad ought not to make its rates so that it can disregard the great competitive fight that is going on all over. They ought to stand as the ally of the factories along the line that were built there only because they had a railroad there.

Mr. CLEMENTS. Yes. Of course, in answer to that, they will admit it is a bad condition, but they will say, "If we do not carry the imported stuff to Chicago and to the Middle West, the Canadian railroads will, or the Illinois Central will, by means of boats to New Orleans and thence by rail to Chicago. It will get there anyhow, and we might as well participate in some of it and get a part of the business."

Mr. KENNEDY. That theory of the railroads is in conflict with the idea that we ought to enjoy these public highways on an equality, each one with every other. Judge Knapp, as I understand, does not believe in the idea that competition is the ideal way of governing rates?

Mr. CLEMENTS. No; I do not think he regards competition as of much importance as some of the balance of us do, perhaps.

The CHAIRMAN. You may proceed with your questions, Mr. Kennedy; but without objection, when you adjourn, it will be understood that the adjournment will be until the usual hour to-morrow morning, at 10.15 o'clock.

Mr. KENNEDY. I myself think that the whole theory of railroads competing is wrong.

Mr. CLEMENTS. I know a great many have that view. That is not the theory of the Government up to this time in those laws.

Mr. KENNEDY. You know that foreign railroads are managed so as to help their industries to get their products into the channels of international commerce successfully. Do you know of any foreign road that conspires with foreign manufacturers to help them distribute their goods cheaper in the railroad's own country than they distribute the products of their own domestic factories?

Mr. CLEMENTS. I really do not know how that is. I do not know of any such case. There may be such, but I am not advised of it.

Mr. KENNEDY. The German roads carry the products of the German factories down to the seaboard cheaper than they carry regular domestic freight. They make domestic distribution in their own territory, I understand. Our roads will distribute for a foreign factory under the present system cheaper than they do for our own producers here.

Mr. CLEMENTS. You mean on imports?

Mr. KENNEDY. Yes; on imports. Have you thought of any way that we could amend section 2?

Mr. CLEMENTS. You could amend it by the provision in the Mann bill that they will not charge any less contemporaneously than they do on the domestic goods.

Mr. KENNEDY. I thought it might be possible to amend it by striking out those words which take away from you control of the foreign trade and confer upon your commission the power to exercise a certain control that might seem to be in the line of public policy.

Mr. CLEMENTS. Something you mean, I suppose, that would permit the commission to allow some difference, but not as great as they make it now?

Mr. KENNEDY. Yes.

Mr. CLEMENTS. I suppose the statute could be framed that way, but of course it must be kept in mind that so long as you permit any difference, and limit that difference, it is not worth anything unless the difference be great enough to permit the outside traffic to come into this country, because that is the only reason they do it, to get a part of it.

Mr. KENNEDY. Farm produce has been carried to the seaboard over our railroads for export cheaper than it is distributed here in this country.

Mr. CLEMENTS. Yes.

Mr. KENNEDY. That might be at times in line with public policy, and at other times it might be bad policy for us to encourage the carrying abroad of any surplus. Has your commission thought of any way that we could confer upon the Interstate Commerce Commission a discretion to control that matter?

Mr. CLEMENTS. I suppose you could put into the law a provision to the effect that the difference should not be more than a certain per cent, or you could leave it to the discretion of the commission to be exercised in some way; to judge as to whether it was detrimental to the public interests of this country or not, and to permit it to exercise its discretion. Of course that would be putting a very grave responsibility on the commission to determine such a question as that.

Mr. KENNEDY. Do you think it is in line with public policy now to have meats carried abroad so that they can be sold more cheaply in London, Paris, and Berlin than they can be sold in Washington, Philadelphia, and Baltimore at this time?

Mr. CLEMENTS. Well, I doubt if it is; and still I suppose that so long as the freight rates that they charge for transportation within this country are not unreasonable, it ought not to be against the interests of this country to permit the surplus to go abroad as cheaply as it can, because our producers, whether on the farm or in the factory, are helped a good deal and the country as a whole is helped by the opening up of the markets of the whole world to take the surplus, rather than have the factories of this country shut down for one-third or one-half or one-fourth time, or because they have manufactured more they can sell in this country. A few years ago it was stated that the cotton mills of this country had put into China all the cotton goods they would need there for a year, and they were hardly able to get any orders from China for quite a long period because of that condition, and it has always seemed to me that while it looks plausible on the face of it to oppose the policy of the railroads in this country hauling for foreigners cheaper than for home people, the

least offensive part of it was the export business, by which the products go out of this country and expand our foreign market.

Mr. KENNEDY. It seems to me we would be in line with the practice of foreign roads if we carried at times the surplus farm products, or even the surplus manufactured products, and we would be helping our production by affording to them the very cheapest possible freight rate in taking their goods abroad.

Mr. CLEMENTS. If the people of this country did not pay any more than is reasonable, and the railroads can join with the ship lines in transporting goods to other countries at a rate less than they charge for domestic service, they help this country in creating a bigger surplus and disposing of it.

Mr. KENNEDY. We have a condition to-day where American capital is going abroad to build factories, partly because they can distribute their goods to the American consumer more cheaply if they make them abroad than if they are made here.

Mr. CLEMENTS. Yes; but all of that may argue that the rates in this country in respect to large volumes of the business may be too high. I do not know, but it may come from that.

Mr. KENNEDY. That is true; but is it right that pottery can be shipped from Trenton, N. J., to Rotterdam, Holland, and then reshipped and sent back across to this country to Denver, Colo., more cheaply than it can be shipped from New Jersey to Denver in the first instance?

Mr. CLEMENTS. I should say that that would pretty nearly prove that the rate from New Jersey to Denver was an unreasonable rate, if they can afford to carry it to Rotterdam and back again and load and unload it as often as it is necessary to do it. That seems to me to be an unnatural condition.

Mr. KENNEDY. They do it. Now, if the Havilands, of New York—and, by the way, they are Americans—do build their factory in New Jersey or New York, it will cost them twice as much to ship their goods to Chicago as it does to ship them from Limoges, in France. What I want is your idea of how that abuse of the American highways can be corrected without injuring any interest.

Mr. CLEMENTS. Well, in particular cases it could be done by a general law limiting the percentage of the difference that they might make on their import rate below the domestic rate; and it might be done by vesting the commission with power to deal with each particular case on the facts, with a direction in the law to guide the commission in the exercise of its discretion. I think it could be done either way. Of course there is this to be considered: The Supreme Court, in the import-rate case, spoke of the interests of the consumers in this country and of the fact that this competition from abroad tended to benefit the consumers and dealers in this country; and you run right into the protective-tariff policy of this Government, of course. You could write into this law, as the Mann bill now has it, a provision prohibiting a freight charge any less than the domestic rate. That will tend to exclude these importations to a large extent, and leave it in the power of the manufacturers of this country to demand higher prices than they now do, because you have to meet the competition of the foreign manufacturers' goods brought in on these rates. It depends on whether you look at it from a high-

protective standpoint or from a free-trade standpoint whether you think it good public policy or not.

Mr. KENNEDY. I look at it from this standpoint: If we had equal facilities over the highways that belong to us, the duty on pottery would not need to be 60 per cent. It would not need to offend against and frighten the consumer by being so high. Our 60 per cent does not put us into the Middle West as against the discrimination that the railroad makes to the American who makes his pottery in some other country.

Mr. CLEMENTS. I know it developed in the investigation of the plate-glass cases over in Pittsburg that one of the men there, who was interested in the manufacture in Pittsburg of plate glass, had built a factory in Belgium, and was operating that as well as his American plants. I should think it would be quite possible to put into the law some reasonable restraint on the degree of difference in these matters.

Mr. KENNEDY. I think it would be in the line of public policy to permit goods that are noncompetitive to come in and be distributed in this country as cheaply as they can be; but to permit the railroads to practically repeal the tariff laws when it is our public policy to encourage American productions, to have the railroads refuse to enter into and be a party to the competition of the factory along its own line—

Mr. CLEMENTS. I think that is a matter that you could control in an act by fixing the percentage limit or by vesting the commission with the duty of ascertaining what would be a reasonable limit on it, and putting the authority in there to do it. As the Supreme Court said in the import rate case, that is a question that the commission, as a rate matter, has nothing to do with, and it is a thing that should be directed to the legislative department of the Government. You gentlemen determine what the tariff ought to be, and what its purposes are, and how far they are to be carried out, and you have this very question closely related to it as to how far you will permit that to be modified by the freight rates.

Mr. KENNEDY. Here is the way the problem presents itself to me: I have quite a number of factories along the Pennsylvania lines. They have no means of distribution except the Pennsylvania lines.

Mr. CLEMENTS. Yes.

Mr. KENNEDY. They want to compete with Borgfeldt, who has built his factories in Germany. Borgfeldt can ship through New Orleans, he can ship through Charleston, or from Baltimore. He has available for his shipments many lines. My factories have but one, the lines of the Pennsylvania Company. Now, should the Pennsylvania Company be allowed to cut us off—eliminate us—from this great productive problem, and say "We will not help you. The thousand tons of pottery that you would like to ship to the Middle West we will get from Mr. Borgfeldt, in Germany, if we make a low enough rate?" Mr. Borgfeldt has 3 or 4 other lines to carry his pottery. Why should not the Pennsylvania Company be our ally for the purpose of entering into that competitive problem?

Mr. CLEMENTS. That goes to the whole question how far you will restrain them in their liberty under the present law.

Mr. KENNEDY. Are they harmed? They were chartered to take care of the traffic of that neighborhood. Why should they be ex-

cused from that duty as a public carrier, and go off into a fight for other traffic that does not need to come that way?

Mr. CLEMENTS. Well, what they would say to you would be this: "So long as we do not charge you any higher rate than is reasonable for the service rendered, you are not hurt when we simply haul some of this foreign stuff to Chicago for a less amount than we haul yours; because if we do not do it they get it there anyhow at the same cost."

Mr. KENNEDY. But if they are not hauling the foreign stuff way below the cost of transportation itself they are charging us a robber's price.

Mr. CLEMENTS. That may be.

Mr. KENNEDY. Should not thoroughgoing regulation and control of the railroads contemplate the power somewhere to put an inhibition upon these public servants from carrying below cost?

Mr. CLEMENTS. Well, the commission has decided now that any rate below cost, carried for one person, is a discrimination against other people, because that must necessarily add a burden on somebody else. The difficulty is in finding out what is cost. But you could put a rule into the law that where a carrier does participate in this import traffic it will be conclusively presumed that that covers cost. That would fix a measure as to how high the domestic rate might be if the one yields cost and something more, because it is to be presumed that they will not long carry unless they get not only cost, but something in addition; and if they do that on the import stuff it might prove their domestic rates to be unreasonably high.

Mr. STAFFORD. On the question of express charges, I would like to ask your opinion. I would like to ask whether the attention of the commission has been called to the tendency of the express companies to merge into two or three companies that will cover the entire country?

Mr. CLEMENTS. Well, I think there has been a tendency all the time toward the concentration of these different lines of business into the hands of fewer and fewer. It is so with the railroads as well as the express companies.

Mr. STAFFORD. I understand that it is the policy of the commission at present to approve of competition among existing railroad carriers?

Mr. CLEMENTS. We regard that as the policy of the law.

Mr. STAFFORD. Is there any competition at the present time, or has there been in recent years, between the various express companies operating over the various railroad systems of the country?

Mr. CLEMENTS. Well, speaking in a general way, I think there has been very little actual competition between them. There may be some.

Mr. STAFFORD. Has there been any general reduction of their rates?

Mr. CLEMENTS. You know we knew very little about the express rates until after the Hepburn Act was passed, and it was some time after that before we could get their rates filed. They were not required to file them with us, and we had no law requiring them to be filed with us until after the passage of the Hepburn Act; and then it was a long time before we could get their rates in shape, as a practical matter, and before they could get them in shape to file them

with us. So our knowledge of the charges of the express companies is limited to a comparatively short time.

Mr. STAFFORD. In those cases of express company charges that have been brought before the commission for review, have they represented general commodities, or are they limited to single cases?

Mr. CLEMENTS. Most of the cases have been rather small cases—that is, single commodities between certain points; but we have had some rather large cases; for instance, in the East to Arizona Territory.

Mr. STAFFORD. But the general subject of whether the express company charges as a whole are unreasonable has not been brought to the attention of the commission for adjudication?

Mr. CLEMENTS. No, sir; you know the law which confines us to the investigation of these matters on complaint and hearing rather confines us to the four corners of the complaint.

Mr. STAFFORD. But under the phraseology of the Mann and Townsend bills the commission will be given authority to initiate an inquiry and pass upon those charges if they believe they are unreasonable.

Mr. CLEMENTS. But you understand that would give us a much wider scope of investigation and determination in respect to the whole situation that would be involved.

Mr. STAFFORD. Has the commission considered in any of its deliberations whether it is possible to have competition among the railroads in handling express business?

Mr. CLEMENTS. Well, I suppose there is just about as much competition between the express lines over the different roads in trying to get business from one territory to another as there is between these systems of railroad in respect of that matter, because, as a practical matter, from one territory to another there have been for a long time these agreed arrangements between the respective lines that get together and confer.

Mr. STAFFORD. I have understood that for many years—for twenty years, in fact—it has been characteristic of the whole development of the express-company business that there has been an understanding whereby they have parceled out the business over different railroad companies to individual express-company lines, and that there has not been any competition to speak of.

Mr. CLEMENTS. I think the tendency is that way. You see it by the lines over which the respective express companies, the leading ones, conduct their business.

Mr. STAFFORD. Do you know, as disclosed from the hearings or from investigations, the reason why the railroad companies are receiving a higher percentage of the gross receipts to-day—it generally being 55 per cent—whereas back twenty years the return that the railroad received of the gross receipts of the express company's business was 40 per cent?

Mr. CLEMENTS. It seems to me that in several cases that have come to my own knowledge recently the arrangement between the railroad company and the express company was that the railroad should have 45 per cent. There may be, and doubtless are, other bases of dividing the charges.

Mr. STAFFORD. It has been stated here in hearings, and I believe Commissioner Knapp approved it, that the usual percentage at present is 55 per cent of the gross receipts.

Mr. CLEMENTS. To the railroad?

Mr. STAFFORD. To be turned over to the railroad; whereas in the first express-company case that was passed upon by the commission in 1887 it was stated there by Commissioner Walker that the usual percentage that the railroads received was about 40 per cent.

Mr. CLEMENTS. Well, now, I would not want to make a positive statement of the averages or of the general proposition without looking a little further into that, because recently I have had a matter up where the Southern Express Company and the Adams Express Company were involved in a matter on a shipment from Carolina points where, as I remember, the allowance to the railroad was 45 per cent.

Mr. STAFFORD. Under the old agreements it was 45 per cent, but recently new agreements have been entered into. For instance, in the arrangement between the Chicago, Milwaukee and St. Paul Railroad and the Wells-Fargo Company, which has just recently taken over the business, I believe, of the American Express Company in that system, the railroad receives an aggregate amount of 55 per cent of the gross receipts; and from newspaper reports it is stated that the new express company immediately raised its rates so as to meet the higher percentage of charge paid to the railroad company.

Mr. CLEMENTS. Well, you may be quite right about it in regard to those western express companies.

Mr. STAFFORD. Of course the merchants of the country are generally criticising the high charges paid to the express companies, and it is a matter of general knowledge that the express companies are earning very large dividends and are in some instances, to use a popular phrase, "cutting melons" for distribution among their members.

Mr. CLEMENTS. I have seen such statements as that in regard to the distributions they make. Of course the investment in the express company is very limited as compared to that in the railroad company. It may be that their profits are very high on the amount of money that they put into the investment.

Mr. STAFFORD. Under the phraseology of these bills as you construe them, will the commission have the same authority to pass upon the reasonableness of the rates of the express companies as they now have with reference to the railroad carriers?

Mr. CLEMENTS. I would understand it so.

Mr. STAFFORD. From your experience on the commission and from your acquaintance with railroad traffic, do you believe it is possible to have competition in the carriage of express matter by the railroads?

Mr. CLEMENTS. Do you mean between the express companies and the railroads, or by the railroads engaging in it?

Mr. STAFFORD. No; for the railroads themselves to handle the express freight on their own individual lines just as they are handling the excess baggage of commercial travelers on their passenger and express trains.

Mr. CLEMENTS. I think it would be quite possible for them to indulge in this just as far as they do in regard to carrying what is called freight. One protest that is made by some of the representatives whom I have heard on the outside—not in any formal case, perhaps, but the point is made from time to time—is that the lower you get the express rates the more of the small freight you will move by express, and between the large centers and territories in this country the express cars will multiply and will become an embarrass-



ment to the railroads in hauling them on their passenger trains. I think they transport express cars from New York to Chicago in trains.

Mr. STAFFORD. Either in trains consisting solidly of express cars or express and mail cars.

Mr. CLEMENTS. Yes.

Mr. STAFFORD. The development of traffic must necessarily be, in the densely populated districts where there is great demand for free intercourse of business, to have more and more express trains.

Mr. CLEMENTS. Yes; and it breaks up again for distribution close to a center like Chicago, and is carried largely on passenger trains—one or two cars. Their point is that the lower you get the freight rates the more of it there will be and the more it will embarrass their passenger business. But I do not, of course, regard any such reason as that as a good reason to uphold rates that are unreasonable; it does not matter what it takes in the way of facilities to do the business.

Mr. STAFFORD. It is recognized, on grounds of public policy, that there is a certain character of small-package freight that it is necessary, for the best business interests, shall be dispatched as expeditiously as possible.

Mr. CLEMENTS. Yes.

Mr. STAFFORD. And that the railroad companies, as common carriers, will provide means whereby that character of freight shall be transported as quickly as possible.

Mr. CLEMENTS. I think it is the duty of the common carrier to do that. Many of the packages must be carried in that way because of the extra care that is necessary in order to keep from mislaying them or losing them because they are small.

Mr. STAFFORD. My attention has been called recently to the practice of some of the express companies and railroads requiring small packages to be bulked in large trunks, where they are for dispatch to some certain place, thereby relieving the express company and the carrier of the annoyance of handling separately little packages by having them bulked in one large trunk for delivery at one certain place.

Mr. CLEMENTS. When they are shipped by different people or to different people?

Mr. STAFFORD. When they are sending out packages by express companies.

Mr. CLEMENTS. By numerous consignors to numerous consignees?

Mr. STAFFORD. By numerous consignors to numerous consignees; yes.

Mr. CLEMENTS. I am not familiar with that rule; but the railroads, you know, require that each shipment shall be separate. That is a matter that is in controversy between the commission and the railroads in court, as to whether they can require separate shipments or not.

Mr. STAFFORD. I am very much obliged to you, Mr. Commissioner.

Mr. KENNEDY. I guess that will be all.

Mr. CLEMENTS. Very well. I understand that I am excused from further attendance.

Mr. KENNEDY. I think that is the idea. We are very much obliged to you and to the other members of the commission.

The CHAIRMAN. The following letters and suggestions may be inserted in the record:

CEDAR RAPIDS, IOWA, *February 18, 1910.*

HON. ELBERT H. HUBBARD,  
*Washington, D. C.*

DEAR SIR: At a meeting of the board of directors of the Cedar Rapids Commercial Club, held Monday, February 14, the following resolution was unanimously passed:

"Resolved, That the Cedar Rapids Commercial Club heartily indorses the statement and argument of Mr. S. K. Cowan, attorney for the American National Live Stock Association, made before the Committee on Interstate and Foreign Commerce, House of Representatives, on February 8, 1910.

"We believe that the proposal to take from the commission all responsibility respecting the defense of its orders, leaving it only where attorneys appointed by the Department of Justice will appear in such cases in court, is a gross injustice to the interest of all shippers and the people in depriving them of their rights to have the Interstate Commerce Commission, after making its orders, charged with the responsibility to put them in effect, from employing the means which it deems best; and, further, that the specific right of shippers to appear in any court involving the validity of the orders of the commission made in behalf of such shippers should be provided for in the law.

"We heartily approve of Mr. Cowan's suggested amendment, on pages 14 and 15, as representing a fair and just provision to accomplish such purpose, feeling that such provisos will mean the equity which both the shippers and commission are entitled to; and be it further

"Resolved, That the Secretary is hereby instructed to communicate the foregoing to all Representatives and Senators from Iowa, requesting their support."

Will you kindly give this a favorable consideration at the proper time, and advise?

Yours, very truly,

JOHN WUNDERLICH, *Secretary.*

P. S. Copies of Mr. Cowan's arguments can be had on application to Hon. James R. Mann, chairman of the House Committee on Interstate and Foreign Commerce.

OKLAHOMA CITY, *February 18, 1910.*

HON. JAS. R. MANN, M. C., *Washington, D. C.*

DEAR SIR: This will refer to my former letter of February 11 on the subject of the interstate commerce court. I have had a communication from Judge Cowan in which he points out the fact that the court proposed in the Townsend bill is different from that which the shippers generally wish to have organized.

I think that on the whole there is very little difference of opinion between Judge Cowan and myself on this matter. Unless the court is to be composed of men especially qualified to deal with subjects involving transportation, at least a minority of them preferably selected from the present membership of the Interstate Commerce Commission, and unless they can either sit permanently at some central location, or, like the Interstate Commerce Commission itself, have hearings at various points to suit the convenience of the great masses of people who have cases upon appeal, and unless the court would be given exclusive jurisdiction of injunction proceedings against state transportation commissions and legislatures on transportation propositions, I do not see that it would be of much benefit to the shippers. On the contrary, I believe that it would be more of a menace than anything else.

We are opposed to the centralization at Washington of any more of the instrumentalities pertaining to regulation and control of interstate commerce, fully believing that matters of this kind are somewhat different from legislative affairs, and the shippers' means of redress should be brought as near to the center of population as possible. Either Chicago or St. Louis would be far preferable to Washington.

If this court is not going to be of any benefit, we can see no particular reason why the additional expense of its creation should be incurred.

Respectfully, yours,

J. H. JOHNSTON.

SHORT LINE RAILROAD ASSOCIATION,

*New York, February 21, 1910.*

HON. JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce,**House of Representatives, Washington, D. C.*

DEAR SIR: The short-line railroads, numbering more than 500 roads, with a mileage of less than 100 miles each, represented by the Short Line Railroad Association, earnestly appeal to your committee to modify the exactions imposed on the short-line roads under the interstate-commerce law as applied to printing the tariffs of these roads. Under the act all railroads are required to file printed schedules. This imposes a heavy expense on the little roads, which they are illy able to bear and should not be forced to bear, particularly as a majority of them run wholly within one State. The principal cost in printing is composition and make ready; it is therefore plain that 10 or 20 copies of the printed tariffs of the short-line roads cost them within a fraction as much as 500 or 1,000 copies cost the longer or through lines. The expense incurred by the short lines in this particular is out of all proportion to that which they are entitled to pay. It aggregates with them more than a million dollars a year.

In view of this, as no public benefits arise from the particular form prescribed by the law in publishing the tariffs, as applied to short-route roads, we suggest that section 6 of the interstate-commerce law be amended so as to permit the commission, in their discretion, to allow typewritten, mimeograph, or hexograph schedules to be filed in lieu of those printed.

Trusting you will fully consider this matter and bring it to the attention of your honorable committee, we remain,

Yours, very truly,

SHORT LINE RAILROAD ASSOCIATION,

By JOHN A. DRAKE,

*Secretary and Treasurer.*WASHINGTON, D. C., *February 21, 1910.*

HON. JAMES R. MANN,

*House of Representatives, Washington, D. C.*

MY DEAR SIR: While not connected at this time with the limited question before you relating to water lines, namely, bearing of section 9 of the proposed act known as administration measure, there is a point that I would like to lay before you, as a representative of the people, which does have a very great bearing on the present question.

There is, I believe, a simple and direct plan to enact a law which will settle this whole controversy in the interests of the people, will preserve their water lines from railroad domination, and will leave them free under the natural laws of trade to perform their great duties in rate regulation. The plan, I think, is worthy of consideration, at least as a suggestion, and I think something of great importance may grow out of it in simplifying the question and in reaching what the people and their representatives demand. This, of course, is only limited to that portion of the commerce act which has any relation to water carriers.

I know your time is limited and you are very much overworked, but before the matter of the proposed administration bill is settled I thought you might like to have this other matter before you, and you could determine whether it is wise at this time to inject it. My own view is that at this session it is best to leave the water lines in statu quo by restoring the omitted clause and aiming to prevent possible repeal of the marine statutes, and adding definitive language in keeping the water hauls of the water lines at least temporarily free and independent; to give them, as it were, a breathing spell, in order that we may intelligently, carefully, and effectively put on the statute books comprehensive measures to preserve equilibrium between water and land carriers.

I think the suggestion I would like to offer to you as a representative of the people would at least have the virtue of simplicity, and, after a full consideration of all the light that can be gotten on it, perhaps efficiency in accomplishing the fullest purpose the people demand.

I write this to you in your personal capacity as a representative of the people, and not as chairman of the Committee on Interstate and Foreign Commerce. If you think there is any virtue in the suggestion, you will know best whether

it ought to come before the committee or not at this time. What I fear is that too much suggestion may cloud the situation rather than clear it, and if the water lines can be let alone at this session it gives a ripe opportunity to propose something adequate at the next session.

I know you have taken quite an interest in transportation matters and, as it is one of your specialties, I thought this would be the best method of getting the matter before the other representatives interested in such legislation.

Believe me to be, my dear sir,

Respectfully, yours,

DANIEL H. HAYNE.

#### ADDENDA.

House bill 17536, has just been changed to House bill 21232. Please consider the word "character," located on sixth line of page 20 of House bill 21232 in reading this brief.

#### SUPPLEMENT TO BRIEF FILED IN BEHALF OF WATER CARRIERS, WHICH SEE FOR FULLER EXPLANATION.

Amendment proposed: After the word "character," page 19, line 10, of S. 5106, and page 18, line 23, of H. R. 17536, insert: "And provided that this act shall only apply to a water carrier where no reasonable or satisfactory through route by rail and water exists, but this shall exclude the power to establish a through rail and water route where a reasonable or satisfactory through route by rail exists; and this act shall not be construed so as to in anywise affect such water carriers' water traffic; and any transportation by water affected by this act shall be subject to the laws and regulations applicable to transportation by water."

The object of this amendment is:

1. That the water lines' local traffic may not be subjected to the risk of artificial regulation except where no reasonable or satisfactory through route exists.

2. That there be no doubt that the Revised Statutes of the United States, limiting risk at sea, are not repealed.

3. That the possibility of mistake in construction may be removed by definitive language protecting the local traffic of water carriers.

It being admitted no change of status quo, with regard to water carriers, is intended, this amendment is suggested to remove all doubt which has been expressed on the effect of S. 5106 and H. R. 17536.

The section of the present interstate-commerce act and the proposed amendments in Senate bill 5106 and House bill 17536 relating to water transportation.

(The words in *italics* show the parts of the act to which reference is made.)

Extract from section 15 of the present interstate-commerce law:

"The commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, *provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line.*"

Extract from section 9 of the proposed amendments to the interstate-commerce law, known as Senate bill 5106 and House bill 17536:

"The commission may also, after hearing on a complaint, or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; *and this provision shall apply when one of the connecting carriers is a water line.* The commission shall not, however, establish any through route, classification, or rate between street, suburban, or interurban electric passenger railways and railroads of a different character."

The following words are omitted from above section 9: "*Provided no reasonable or satisfactory through route exists.*"

The above extract from section 9 of Senate bill 5106 and House bill 17536, amended as proposed herein, would read as follows:

"The commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged, and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classification or joint rates; and this provision shall apply when one of the connecting carriers is a water line. The commission shall not, however, establish any through route, classification, or rate between street, suburban, or interurban electric passenger railways and railroads of a different character: *And provided, That this act shall only apply to a water carrier where no reasonable or satisfactory through route by rail and water exists; but this shall not exclude the power to establish a through rail and water route where a reasonable or satisfactory through route by rail exists; and this act shall not be construed so as to in anywise affect such water carrier's water traffic; and any transportation by water affected by this act shall be subject to the laws and regulations applicable to transportation by water.*"

(The proposed amendment is shown in italics.)

(The committee thereupon adjourned.)



# HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

## INTERSTATE COMMERCE

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### PART XXIII

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WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1910

**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES.**

**JAMES R. MANN, ILLINOIS, *Chairman*.**

**IRVING P. WANGER, PENNSYLVANIA.  
FREDERICK C. STEVENS, MINNESOTA.  
JOHN J. ESCH, WISCONSIN.  
CHARLES E. TOWNSEND, MICHIGAN.  
JAMES KENNEDY, OHIO.  
JOSEPH R. KNOWLAND, CALIFORNIA.  
WILLIAM P. HUBBARD, WEST VIRGINIA.  
JAMES M. MILLER, KANSAS.  
WILLIAM H. STAFFORD, WISCONSIN.**

**WILLIAM M. CALDER, NEW YORK.  
CHARLES G. WASHBURN, MASSACHUSETTS.  
WILLIAM C. ADAMSON, GEORGIA.  
WILLIAM RICHARDSON, ALABAMA.  
CHARLES L. BARTLETT, GEORGIA.  
GORDON RUSSELL, TEXAS.  
THETUS W. SIMS, TENNESSEE.  
ANDREW J. PETERS, MASSACHUSETTS.**

## BILLS AFFECTING INTERSTATE COMMERCE.

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The CHAIRMAN. The following letters and suggestions may be inserted in the record:

CHICAGO, January 4, 1910.

HON. JAMES R. MANN,  
*House of Representatives, Washington, D. C.*

DEAR SIR: This company is one of a number of Chicago business concerns which met on the 29th of December and drew up a joint letter, which was sent to you, a copy of which is inclosed. We wish to make an individual appeal to you.

Owning and operating a great many plants in this country, five of them in the State of Illinois and two of them in your own congressional district, we feel that we have mutual personal interests in these two plants, and therefore we beg to advise you that since November 1, 1907, these two plants, employing 1,000 men, have been absolutely closed, and the men all idle; that recently we started up about 20 per cent of the capacity of these plants, hoping that by next year we would have them running full blast. We regret to say that at present we have no such hope. In fact, we doubt our ability to even keep them running at this limited capacity for more than two or three months. We attribute the cause as entirely due to the alarm with which the financial public view the future earning capacities of the railroads. With ever-increasing demands of their employees, which if satisfied would reduce their earning capacities very materially, with all of the adverse railroad legislation now in vogue, and with threatenings of a vast amount more in sight in the coming Congress, it is not to be wondered at that railroads should buy absolutely nothing but that which they are compelled to, and here is where it affects us, and already we feel the conditions of 1907 repeating themselves.

We believe that you can do the men whom you represent in general, and us in particular, a great deal of good by opposing this ever-increasing and hasty congressional action concerning railroad operations. We do not ask you because of our love for the railroads, but we are asking you for ourselves, because we are really the ones who are suffering most from this excessive railroad legislation.

The subject is too great to be confined in a short letter. We would gladly give you more definite reasons, but in the meantime we would ask you to please take our word for the situation, and use all the effort you can to hold back this senseless rush, at least until we have time to recover from the last assault.

Believing and hoping that this will meet approval at your hands, I remain,  
Yours, very truly,

GRIFFIN WHEEL COMPANY,  
By T. A. GRIFFIN, *President.*

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DECEMBER 29, 1909.

DEAR SIR: At a meeting held this day it was voted that we present for your consideration some facts, from our point of view, concerning newly proposed railroad legislation. We are all manufacturers, doing business in Chicago, many of our factories in your district, representing thousands of employees.

In the outset we wish to disclaim any desire to ask favors for ourselves or for the railroads; all we want is justice. The Federal Government and the state governments have passed many laws for the regulation of railroads, and other laws will be proposed, and some of them will be adopted. We admit the necessity of wise regulation of railroads by the nation and by the States, and if such wise regulation seems to injure us or our employees we will submit.

The particular subject to which we ask your attention is the revision of the interstate commerce law, which it is thought will, within a few days, be recommended by the President. Should one of the President's recommendations be that the railroads



shall not make any changes in their tariff rates until the Interstate Commerce Commission shall have given its approval, we dread the effect which this might have on general business.

We must do everything in our power to avoid a recurrence of the business stagnation which began in the fall of 1907 and continued for nearly two years. During that period many of our men were out of employment and the remainder worked only part time. Many manufacturing establishments in your district and elsewhere were idle. We believe that the business depression referred to was caused entirely, or almost entirely, by the feeling of antagonism which existed two years ago toward the railroads. We are not here to excuse the railroads for their faults, and we know they had many. We believe the railroads have made unusual efforts during the past two years to remove the causes of public dissatisfaction; they have accomplished much in that direction; they are still trying, and we believe will continue to do so.

At the present moment there is a second decrease in railroad purchases; we feel it in our business, and some of us are again reducing our output and laying off men. We think this is the result of the present agitation of further railroad legislation, especially the fear that the rate-making power is to be taken from the roads.

We ask that very careful consideration be given the subject before any additional regulatory laws are passed, to the end that nothing may be done to check the continuation of the business prosperity which commenced a few months ago.

We have not undertaken in this communication to set forth in detail our reasons for objecting to taking the rate-making power from the roads, as that subject, and others, is treated in a letter dated October 27, 1909, addressed to the Attorney-General by the Railway Business Association, of which most of us are members, and of which letter a printed copy is attached hereto, and to which we ask your careful attention.

We wish to impress upon you the seriousness of the situation to us as employers of a large number of men, and request you as our Representative to do everything in your power to oppose the passage of any law that will take from the railroads the power to initiate or originate rates.

Yours, respectfully,

American Radiator Company, Adams & Westlake Company, Ajax Forge Company, American Steel Foundries, By-Products Coke Corporation, Block-Pollak Iron Company, Blue Island Car and Equipment Company, Buda Foundry and Manufacturing Company, Camel Company, Chicago Bridge and Iron Works, Chicago Pneumatic Tool Company, Jas. B. Clow & Sons, Fairbanks, Morse & Co., Federal Furnace Company, Featherstone Foundry and Machine Company, Griffin Wheel Company, Hewitt Manufacturing Company, Hickman, Williams & Co., Edward Hines Lumber Company, Robt. W. Hunt & Co., Joyce-Watkins Company, McCord & Co., Morden Frog and Crossing Works, Niles-Bement Pond Company, Pettibone, Mulliken & Co., Pickands, Brown & Co., Pneumatic Gate Company, Rodger Ballast Car Company, Sellers Manufacturing Company, Standard Forgings Company, United Supply and Manufacturing Company, Railway Steel Spring Company, Guilford S. Wood, Chicago Railway Equipment Company, W. H. Miner Company.

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RAILWAY BUSINESS ASSOCIATION,  
New York, October 27, 1909.

HON. GEORGE W. WICKERSHAM,

*Attorney-General United States, Chairman Committee Appointed by  
President to Recommend Changes in Laws Regulating Interstate Commerce.*

DEAR SIR: At the request of the Railway Business Association for an opportunity to lay before your committee our views as to railroad legislation, you have indicated a willingness to present for the consideration of the committee any written statement we might submit. We will confine our suggestions at this time to one subject, namely, the proposal suggested tentatively for discussion by the President of the United States in an address at Des Moines, Iowa, on September 20, to confer upon the Interstate Commerce Commission power to postpone freight-rate increases until final hearing and adjudication by the commission as to their reasonableness. To this legislation our association is opposed, not because of any lack of confidence in the personnel of the present Interstate Commerce Commission, for whose ability, experience, industry, and integrity we have the highest respect, but because we believe the proposal to be fundamentally and economically mistaken and fraught with injury to the country.

We beg to remind you that our position is by no means only that of industries seeking to shield our customers, the railroads, from attack. We do not seek to represent the railroads, nor are we authorized to do so. We appear in our own interest.

Industries dependent upon railroad purchases employ 1,500,000 men. The members of our association, though only a part of the whole, represent a capital invested exceeding \$500,000,000. Injury to our customers by unwise, unfair, or unnecessary legislation is damaging to our employees and to those whose investment of money has made the industries possible. With us wisdom in railroad regulation is a business necessity. Nor should it be forgotten that we pay freight bills aggregating millions annually and are as much interested as any other class of shippers in having rates reasonable and equitable.

Our position is not one of general obstruction to all measures affecting railroads. We admit the necessity of and believe in the desirability of their regulation. Furthermore, our attitude being more friendly than critical toward the railroads, we hope our influence with them may help in their task of meeting the reasonable desires of their patrons. The problem, as we conceive it, is to establish such regulation as will make the railroads efficient and adequate agents of transportation and maintain equity between shippers and carriers. It is in this spirit that we now offer you our views.

As reported in the press dispatches, President Taft's Des Moines speech contained the following:

"Under the interstate-commerce law a new rate classification is to be filed with the commission. It is proposed now to authorize the commission to postpone the date that such new rate classification is to take effect. This introduces a new element into the act by placing the railroad company in the situation when it proposes to make a change in the rate that it should be prepared to show to the commission affirmatively that the change to the new rate is justified.

"I am inclined to think that this is a fair change in the provision of the law. It gives to the public the same right to have changes which affect them injuriously investigated before they go into effect as it does changes of rates by the railroads by appeal to the courts to have the order of the commission subjected to investigation and hearing. Railroads ought not to be permitted to change rates unless they can give a reason for it."

It is our opinion that of all the proposals affecting railroads now seriously considered none is more dangerous than this. The proposed clause, if it accomplished the purpose defined in the above quotation, would absolutely deprive the railroads of the power to make rates.

A careful study of the debates in both Houses of the Fifty-ninth Congress, preceding the enactment of the Hepburn bill, throws important light upon the subject. The proposal was to give the Interstate Commerce Commission power to investigate on complaint a scheduled freight rate and to declare it unreasonable if so found. Such a decree automatically mulcted the carrier to the amount unlawfully taken from the shipper, with interest.

It was contended by some opponents of the bill that in effect it would take away the right that should inhere in the carrier to initiate rates. In answer to this, and in defense of the bill, it was argued, and as events have shown, rightly, that the bill did not take from the carriers the power to initiate rates, because it explicitly authorized the carrier to fix the rate, which went into effect and so remained until the commission declared it unreasonable.

President Roosevelt, in his message of the preceding December, had said:

"My proposal is not to give the commission power to initiate or originate rates generally, but to regulate a rate already fixed or originated by the railroads, upon complaint and after investigation."

In debate many Senators and Representatives favoring the bill declared themselves opposed to any attempt to rob the carrier of his initiative as to rate making, and upon their assurance that it did not do that they asked support for the bill. The whole debate was replete with asseverations by those advocating the measure that the initiative as to rates properly belonged to the carrier. Senator Lodge, of Massachusetts, quoted from a circular sent out by Edward A. Moseley, secretary of the Interstate Commerce Commission, 1899, upon authority vested in him by resolution of the commission, in which occurred the following:

"The commission neither asks nor desires to be invested with general rate-making power. It simply asks for authority to correct rates which have been previously established by the carriers in the full exercise of their rate-making power, when such rates are found by the commission, after due notice, investigation, and full hearing, to be in violation of the act."

It would seem that the right of the carrier to initiate rates was preserved and specifically sought to be preserved in the Hepburn bill by the provision that only after a rate had been initiated, filed, and effectuated by tolls collected could a complaint be entertained and a decree of unreasonableness issued. It is just here that the

proposition now advanced differs fundamentally from the Hepburn Act. How can the right of initiative be preserved if, as discussed in the President's Des Moines speech, no rate filed by the carrier can become effective until the commission has given its consent? If the commission, in its discretion, may postpone the effectuation of a rate, not by investigation of complaint and decree upon the merits, but merely treating the complaint as a *prima facie* cause for vetoing such initiative, pending the convenience of the commission in reaching a final conclusion, how can it be said that the carrier has power to make rates? Instead of sustaining the power of the carrier to initiate and establish rates, a law such as is proposed would merely grant to the carrier the prerogative of suggesting a rate for the consideration of the commission.

How can anyone who in 1906 declared against depriving the railroads of their power to fix rates support now a bill to give the power of postponing rates to the commission?

While the Hepburn bill was careful to give the shipper ample protection against any overcharge improperly collected, with interest, no protection is proposed or could be proposed for the carrier as a provision of the suggested change in the law. If the carrier can not collect the rate fixed by it until somebody has approved it, the carrier has certainly not initiated it. If, having fixed a new rate, the carrier must continue to collect tolls at the old rate until it is permitted by the commission to effectuate the new one, and such effectuation has been finally decreed by the commission, has not the carrier been mulcted out of the difference during the period of suspension? Has it not had earnings taken away to which it was entitled, as shown by the approval of the commission, without any possibility of their recovery?

The carrier having, by intervention of the commission, lost a sum of money which that body subsequently decided the carrier ought not to have lost, there is no power to secure this money from those who should have paid it.

The chief ground on which it was urged in Congress that the railroads should retain their power of rate making was that such retention of power by them was in the public interest. Representative Mann, of Illinois, now chairman of the House Committee on Interstate and Foreign Commerce, said in debate:

"The power to fix generally absolute rates is the power to destroy competitive forces, to paralyze industries, to injure railroads, to interfere with all of the principles and methods of modern business life."

What we have said relates to the general policy of permitting the carrier, as a matter of good business for all concerned, to initiate every rate. What has been contended above is that it would be a mistake to give the commission power to veto a new rate before it goes into effect, even if the decisions of the commission could be promptly rendered. We are convinced, however, that the practical evils following bestowal of this power would be vastly greater than the theoretical; for in the nature of things the decisions would be delayed, in many cases indefinitely, owing to the inability of any commission to dispose promptly of so many protests as would certainly be filed.

Is it not certain that when money could be saved so easily as by a mere protest, every advance would be protested by somebody? Not even so hard working and well organized a body as the present commission would be able to give more than cursory preliminary examination to each protested rate, and to avoid criticism would be obliged to treat all alike by postponing all. The railroad would thus find itself unable to raise any rate without having first presented its case at a hearing. Thus the rate-making power as affects increases would be taken from the hundreds of traffic officials all over the country whose specific business, each in his own jurisdiction, is making rates, and given, under conditions that would make promptness and dispatch impossible, to the commission, who, even when possessed of as long experience as several of the present members, could only hope to give direct attention to a limited number of concrete industrial situations.

We do not believe it is desirable that such powers of obstruction should be vested in the shippers (of whom we are an important part) when the records for sixteen months after the passage of the Hepburn Act show that out of 5,952 complaints lodged with the commission, 2,105 were outside the jurisdiction of the commission, 3,374 were of such a nature as to require only correspondence or conference for their disposal (half of them being settled without hearing, the other half being dismissed), while the 473 complaints remaining were being decided at the rate of 155 in favor of the railroads to 86 in favor of the shipper, or a final result of less than 3 per cent of all in favor of the shipper.

The chairman of the Interstate Commerce Commission itself, on behalf of that body, in a letter dated January 29, 1908, and addressed to the United States Senate Committee on Interstate Commerce, said:

"If every proposed advance had to be investigated by the commission and officially sanctioned before it could take effect, the number of cases to be considered would presumably be so great as to render their prompt disposition almost impossible.

"It is further to be observed that the passage of such a bill at this time would impose a burden upon the commission which it should not be asked to undertake.

"In instances of justifiable increase the necessary delay resulting from the probable volume of cases would work injustice to the carriers."

It may be pointed out that there is a distinction between the bill to which Chairman Knapp in this letter referred, providing for automatic postponement of every protested advance, and the present proposal to "authorize the commission to postpone" advances (that is, in its discretion). We are forced, nevertheless, to conclude that the commission, being unable to examine all protests, and thus obliged to postpone all, would be burdened with congestion causing delays even greater than those which would result from automatic postponement upon protest, since the discretionary power would involve preliminary as well as final hearings and constitute so much the greater embarrassment to the commission. From the vigorous opposition of the commission to any measure which would cause delays in the adjudication of protests, it seems fair to assume that that body will withhold its approval of any measure unless it contains effective provision for restricting protests to a number which could be passed upon promptly yet thoroughly.

How could the right of protest be restricted? To what class of shippers will the right be denied? If it were denied to any the law could not stand and in point of fact it is probable that a measure can be so drawn as to restrict the number without doing a wrong to those excluded?

It is our conviction that no such bill can be drawn. Certainly none of the bills now on the calendar and dealing with this subject attempt to restrict the number of protests to a working basis, nor do the published reports of the President's Des Moines address indicate that he had at that time under consideration such restrictions.

Assuming that the proposal is to allow unrestricted protests of all advances, and that under such a system all advances would be protested and all postponed, with a continually increasing accumulation of arrearages amounting in most cases to holding up of all advances indefinitely, we urge upon your consideration what seem to us convincing reasons for not giving this measure the prestige of support by the federal administration.

The proposal under discussion would impart to rates a general rigidity as a normal condition, which could only be changed item by item by special permission, obtained after legal process.

It has been the elasticity of the rate structure that has built up the farms, mines, mills, and trade of the country, developing new business while fostering old. In order to meet the requirements of industries and communities, the rate makers must keep in daily touch with conditions and conform rates to the needs of their constituencies. The one thing indispensable to a railroad is that the industries whose product it carries shall be prosperous.

What gives the far-sighted shipper greatest solicitude is that he should at all times have good service. The fraction of a cent involved in an increased freight rate can perhaps be absorbed, while the selling price is maintained at a figure enabling him to hold his customers against competition in distant markets. Slow transit due to congestion or other inadequacies of freight service can not be "absorbed," and the customer may be lost altogether by failures in delivery. It is therefore quite possible that an increased freight rate, if it results in better facilities to the shipper, is not a burden upon him but his salvation.

These constant increases and decreases (and we believe in both in their proper places) must so balance that the railroad shall meet its cost of operation and have an adequate surplus for making or financing improvements. It is one of the extraordinary facts of our national history that the average freight rate should have declined, as the statistics of the Interstate Commerce Commission show, rather than increased, when the steadily rising cost of many items entering into the service is taken into consideration.

If there have been increases either direct or through changes of classification, have they been as great in proportion as the increase which the shipper has in the same period made in the price of his own goods? And in the meantime while the general tendency has been downward in rates, the railroads like all other business enterprises have had to pay more for labor and materials. To cite a single example, the wages, which are more than 40 per cent of the gross receipts of the railways of the United States, had so increased from 1897 to 1907, according to the reports of the Interstate Commerce Commission, that the number of days' labor which could be bought for a given number of dollars in 1907 was 16.27 per cent less than in 1897.

If rates can not be increased without legal process the railroads will make reductions only with the greatest caution. To hold up all proposed increases as suggested would, of course, automatically hold up all reductions. Shippers or boards of trade often ask railroads to make, temporarily, an especially low rate in order to give relief from dis-

tress caused by some emergency. As a temporary measure the railroad can and does afford this relief. As a permanent rate the reduction would usually be impossible to maintain. No railroad would voluntarily reduce a rate under such conditions if it knew that it might not be able, when the temporary exigency should have passed, to restore it without a long-drawn-out controversy.

Chairman Knapp, in the letter from which we have already quoted, said:

"If no rates could be increased without the approval of the commission after affirmative showing by the carrier, it might happen that many reductions now voluntarily accorded would not be made."

Thus we should have a situation in which the railroads could not change their rates because of the law, and the commission could not change rates because unable to clean up its docket. Practically, therefore, the proposal would mean only a petrification of rates.

What public dissatisfaction with the existing system has been shown to justify any such revolution as would be involved in such legislation as is suggested?

Do the 5,952 complaints already referred to as lodged with the commission, with the result that about 3 per cent were ultimately decided in favor of shippers, justify such action?

When the commission states that it would have to examine 150,000,000 rates to determine the increases made in the last two years, do not the 5,952 complaints made appear small and the cases finally decided in favor of the shipper become infinitesimal?

Do not these figures set up a strong presumption that rate making by the traffic officials of the carrying lines has on the whole been fair to the shipper? We have investigated and found that on most lines less than 10 per cent of all the rates filed since July 1, 1906, involved any change whatever, either up or down. Where there were changes a great many were reductions.

The argument has been advanced that "established industries" are now at the mercy of the carrier so long as it retains the power to increase rates. But is it not the fact that under the law as it stands such an industry has its complete remedy in restoration of the excess with interest when a rate is declared unreasonable, while under the law as proposed the carrier would be deprived of its rightful revenue without remedy if its rate as filed were sustained?

The Interstate Commerce Commission in its reports for 1907 and 1908 indicates certain types of enterprises which it regards as being in a position to be injured if the railroads continue to possess the power to advance their rates without hearings before the commission. An instance cited is that of the coal operator doing business under contracts with customers. The commission remarks: "The margin of profit is such that an advance in the transportation charge of no more than 5 or 10 cents per ton may convert a profitable contract into a losing one." The operator, however, can and if prudent always does establish complete protection for himself and his customers by inserting in the contract a clause providing that if the freight rate shall increase the price shall increase correspondingly and that if the freight rate shall be reduced the customer shall have the full benefit. The same expedient would, of course, be applicable to any commodity. Suppose, moreover, there were no such method of protecting contractors, and that the commission were to be authorized to postpone in its discretion for their benefit the going into effect of rate advances, how would the commission reconcile the conflicting demands of various dealers whose contracts were not made and could not be made for identical periods? It seems to us that the task would be one of hopeless confusion. We have been unable to imagine a legislative device by which shippers can be insured against changes in the price of transportation any more than they can be insured against changes in the price of labor, materials, or the sudden and unexpected imposition of new taxes.

We are unable to see upon what real grievance the request for this power is based or what benefit would result from conferring it. On the contrary such a departure would involve the serious dangers which are enumerated above, and we respectfully urge you that unless a way can be found to provide effectually against the evils which we have mentioned, you will not recommend that the President give this proposal the influence of his potent official sanction.

GEORGE A. POST.	W. G. PEARCE.
H. H. WESTINGHOUSE.	H. G. PROUT.
O. H. CUTLER.	J. S. COFFIN.
W. H. MARSHALL.	W. V. KELLEY.
E. S. S. KEITH.	E. L. ADREON.
A. H. MULLIKEN.	J. H. SCHWACKE.
O. P. LETCHWORTH.	A. M. KITTREDGE.
CHARLES A. MOORE.	JOHN F. DICKSON.
FRANK W. NOXON, <i>Secretary</i> .	

PASADENA, CAL., January 5, 1910.

Hon. JAMES R. MANN,  
*House of Representatives, Washington, D. C.*

DEAR SIR: I noticed by the papers a day or two ago that you have introduced a bill in the House providing for an amendment of the interstate-commerce laws, which I think is a very wise move, as the present law is very defective, giving the railroads a chance to rob the people, using this as a shield.

I wish to call your attention to a case of my own. As you probably know, my health has not been very good for the last few years, and I have been spending my winters in Pasadena, having a house here, and living in Chicago in the summer.

I am in the habit of sending an automobile out each year; this year I shipped two. Before shipping I was very particular to have them billed properly to avoid an overcharge at this end. I got a rate from the contracting freight agent of the Santa Fe from the general freight agent of the Chicago, Burlington and Quincy, and from the local agent of the Chicago, Burlington and Quincy at Naperville, Ill., from which point they were shipped. These rates all harmonized. The cars were properly weighed. I received a bill of lading and prepaid the freight, which amounted to \$120 on each car.

On arriving here the agent of the Santa Fe advised me that there would be \$126 additional charges on the machines, that the agent at Naperville had made a mistake in billing the cars, and had not charged the proper rate. You can imagine how I felt after being as careful as I was to avoid trouble. The agent here informed me that under the provisions of the interstate-commerce law they were forced to adhere to uniform tariff rates, and while he realized the injustice of it I would have to take my medicine. Otherwise he could not turn the cars over to me.

I took the matter up with their general freight agent in Los Angeles and also the traffic manager of the Santa Fe Railroad, and they could give me no relief. In fact the Santa Fe people here and in Los Angeles informed me that they were having trouble of this kind every week and had some that were more aggravating than mine.

Now, you can appreciate the injustice of this sort of treatment, making the shipper responsible for the acts of their own agents. I shipped these cars in good faith and prepaid the freight, and they agreed to deliver them to me in Pasadena at that price. Of course the only thing I could do was to pay the overcharge or replevy the cars, and lose the use of them and incur a lot of expense. As I mentioned before, this thing is occurring every day with shippers and it is simply a confiscating of their property. There should be a penalty where railroads give one rate and collect another. They should be held responsible for the acts of their agents, and I hope in any amendments offered to the interstate-commerce law you will incorporate this, as I can furnish plenty of people who have been treated just as I have. It looks to me, after reading the interstate-commerce laws, that the attorneys for the railroads had much to do with drawing this bill.

Yours, truly,

T. P. PHILLIPS.

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CHICAGO, January 21, 1910.

Hon. JAMES R. MANN,  
*House of Representatives, Washington, D. C.*

DEAR SIR: Kindly note attached copy of our market letter of January 20, in which we refer to the unsatisfactory transportation service throughout the country. A copy of this has also been sent to Representative J. G. Cannon, the Speaker of the House.

It is quite possible that you will find this a subject worthy of inquiry by the Government, with a view of bettering the service furnished the people. In it, it strikes us, you will find one of the chief reasons for existing high prices and dangerous inflation of values. Our company is in the business chiefly of buying and selling the actual cash grain and seeds, and, handling as we do approximately 5,000 cars per annum, we are in a position to know directly how severe are the hardships imposed on the grain trade of the country by the poor service on the part of the railroad companies. Grain is in transit from four to eight weeks, and in some cases even longer, that should run in to market in from three to ten days.

Every concern of any importance in the grain business in the centers has hundreds of thousands of dollars tied up, and the aggregate runs away into the millions. It is a well-understood fact that the credit of a large part at least of the grain trade is strained to the utmost. Banks are compelled, for self-protection, in many instances to refuse further advances, even against bills of lading, and the farmers and shippers of grain in the West, while willing and anxious to sell and to move their grain, are utterly unable to do it. Country elevators almost everywhere are full to overflowing and our shippers in the West, comprising between 500 and 1,000 of the smaller grain shippers throughout

the Mississippi Valley territory, complain bitterly of the lack of facilities, and of the possibility of loss in their business owing to the fact that they can not dispose of their holdings.

We realize fully the fact that severe weather, such as we have had this year, will necessarily hamper the transportation companies, but, with good management, it would hardly be possible to cripple them more than temporarily, and business would not be so materially delayed. If the management of the railroad companies made proper provisions for severe weather, such as can be expected every season—if their engines and rolling stock were put in good shape, sufficient snowplows, men, machinery, etc., provided to keep the tracks clear—there is little question that the actual delays would be much less, and perhaps not enough to seriously injure the business and trade of the country. As it is, the western roads between Chicago and points of shipment are in the worst possible shape, loaded cars are strung along all switch and side tracks throughout the country, and conditions seem to be getting worse rather than better.

It may be impossible to do much to help this state of affairs for this season's business, but immediate inquiry and pressure brought to bear would undoubtedly help some and might prevent a recurrence of this sort of thing for the future. Tight money and inflated values resulting from a tie up such as described above could easily result in semipanic conditions, especially if coupled with equal inflation in the stock markets of the East, and the usual disastrous consequences, as evidenced by the severe failures of the past few days. We would not like to see the panicky conditions of two years ago repeated, but we fear that unless relief in the shape of a release of the large amounts of money tied up comes soon there is great danger of a repetition of the bad state of affairs of that time.

In any event, governmental inquiry should be instituted, with a view of regulating the railroad service throughout the West. Our information goes to show that the eastern roads have not been so badly troubled from a tie up as the western. Whether this is owing to better management or to less severe weather, we do not know. We are inclined to think that more pains were taken by the trunk lines running from Chicago to the seaboard to keep their tracks clear than by those in the West. Their motive power and rolling stock is in much better shape and shippers from Chicago to the East are making fewer complaints.

We will be glad to furnish any further information along this line, such as is within our power, if required.

Yours truly,

SOMERS, JONES & Co.  
A. L. SOMERS, *President*.

CHICAGO, *January 20, 1910.*

DEAR SIRS: The markets are higher to-day. Shorts covered freely, and there appeared to be renewed investment buying. The supply of cash grain is light. The railroad companies are not bringing it in promptly. It is hard to understand the attitude of the railroads. It would seem from the manner of handling their business that they have had a stroke of paralysis, and that it should be made the subject of inquiry by the Government to effect a cure. On the face of it, it seems inconceivable that a railroad conducted for the real interests of its stockholders and the public should go all to pieces with a few weeks of zero weather. The old story of defective motive power and rolling stock, so evidently the result of false economy and bad management, is becoming tiresome, and it is high time that something was done by the Government to conserve the interests of the people and to give the country the transportation service to which it is entitled. Millions of dollars' worth of grain and other property is tied up, money is getting tight, interest charges are piling up, and the consumer pays.

We advise strongly to hedge holdings of cash grain of all kinds in futures in the pits here. This is especially true of the wheat, oats, and barley, competition for all of which from other exporting countries is extremely great. Barley prices will probably depend largely on oats values, and should also be hedged in the May oats. Wheat prices look high in view of the fact that other exporting countries are supplying European needs. This country is likely to have a large surplus left over unsold unless prices get down considerably lower before the opportunity to sell abroad is lost. Russia's enormous crop of wheat, 783,000,000, is its money crop and will, no doubt, be marketed freely during the winter. The possibilities for shipments from Russia are best shown by the following table of crops, as it is not generally known how large Russian crops are:

*Crops of Russia.*

	Rye.	Wheat.	Oats.	Barley.
	<i>Bushels.</i>	<i>Bushels.</i>	<i>Bushels.</i>	<i>Bushels.</i>
1909.....	896,835,000	783,000,000	1,145,373,000	473,617,000
1908.....	782,790,000	569,486,000	942,571,000	377,926,000
1907.....	508,126,000	510,692,000	907,261,000	353,447,000
1906.....	666,846,000	508,392,000	713,005,000	312,038,000

*Wheat.*—The May closes  $\frac{1}{2}$ , the July  $\frac{3}{4}$  higher, samples following. Durum is 95 to 1.02. All sample wheat without dockage for dirt.

*Corn.*—May and July close  $\frac{1}{2}$  higher, samples  $\frac{1}{2}$  to 1 cent higher. Sample grade, 58-60 $\frac{1}{2}$ ; 4 mixed, 63 $\frac{1}{2}$ -64 $\frac{1}{2}$ ; 4 Y, 64-64 $\frac{1}{2}$ ; 3 mixed, 65; 3 Y, 65-65 $\frac{1}{2}$ ; 3 white, 65 $\frac{1}{2}$ -66 $\frac{1}{2}$ ; 2 Y, 68 cents.

*Oats.*—May and July close  $\frac{1}{2}$  higher; samples  $\frac{1}{2}$  to 1 cent higher. 4 whites, 47 $\frac{1}{2}$ -48 $\frac{1}{2}$ , mainly 48; 3 whites, 48 $\frac{1}{2}$ -49 $\frac{1}{2}$ , mainly 48 $\frac{1}{2}$  to 49; standards, 48 $\frac{1}{2}$ -50 cents.

*Rye.*—Firm. No. 2, 80-81.

*Timothy.*—Strong. Spot seed quotably 3-3.80, mainly 3.25 to 3.50. Spring trade is setting in and, with probable delay in arrival, immediate shipments for best results are in order.

*Barley.*—Steady to 1 cent higher. Malting, 67-73, mainly 69-71; mixing, 63-65, and screenings, 50-65. Supply too light. Large quantities of barley in transit, but not available, and maltsters compelled to buy locally to replenish their stocks. High prices for cash grain of all kinds likely, as not much show to get the railroads cleaned up for another month.

Closing prices are:

	Wheat.	Corn.	Oats.
May.....	\$1.09 $\frac{1}{2}$	\$0.68 $\frac{1}{2}$ A	\$0.47 $\frac{1}{2}$ A
July.....	1.00 $\frac{1}{2}$	.67 $\frac{1}{2}$ B	.44 $\frac{1}{2}$ A
September.....	.90 $\frac{1}{2}$	.67 $\frac{1}{2}$ B	.41 $\frac{1}{2}$

Yours, truly,

SOMERS, JONES & Co.

BUREAU OF RAILWAY NEWS AND STATISTICS,  
Chicago, January 28, 1910.

HON. JAS. R. MANN,  
House of Representatives, Washington, D. C.

MY DEAR MR. MANN: I wish to thank you for your kindness in sending me your own bill and the Townsend bill containing the proposed amendment of the act to regulate commerce. While, as you are aware, I am one of the students of railway problems who does not believe that any crying necessity exists for further legislation on this subject, especially at the present time, and without giving the Hepburn Act time to prove its value or its weakness, I am inclined to think that your bill contains less objectionable matter than Mr. Townsend's, which is largely a formulation of the pleas of the Interstate Commerce Commission for more power, where they should ask for a limitation of their opportunities to cripple the railways,

It seems to me that Congress has missed absolutely the one feature of all attempts to regulate the railways where there is need of a change, and this is in the selection of the body intrusted with the power to regulate. There should be a brief act declaring that the commission should be composed of three lawyers chosen from the circuit bench, and four men of practical experience connected with railways—one from the traffic department, one from the financial department, one from the operating department, and one, like Mr. Clark, to represent the railway employees' view of the situation. Then we should have a commission fairly well balanced and equipped to sit in judgment over the problems submitted to it. The control of railway statistics should be taken absolutely out of the hands of the commission and placed under the control of the Department of Commerce and Labor. For over twenty years these statistics have been the shuttlecock of an educational theorist who could no more manage 10 miles of railway than I could.



The commission and its secretary should be absolutely prohibited from agitating for or against legislation relating to its duties. It is nothing short of a scandal—the use made by the commission of its position to antagonize the great industry which it is appointed to protect as well as to regulate.

The trouble with the whole situation is that the railroads are afraid to say their souls are their own.

As to your bill, it seems to me that you do not define sufficiently the class of men from whom your commissioner of transportation should be chosen; and, in these days of high cost of living I do not believe you can get a man fitted for the position for \$6,000 per annum, nor a man fitted to be his deputy for \$4,500. I was interested to see that you have made provision for the issue of tickets or passes for transportation in payment for publication in newspapers of brief time-tables, showing the arrival and departure of passenger trains at the place where such newspaper is published. I think that this provision is all right, but it should be made clear that this exchange of transportation for advertising should be confined to time-tables and not permitted to run for general advertising. Both as an ex-newspaper editor and as a railway statistician it seems to me that the time-tables of railways should be published for the convenience of the public, taking the place of its being posted at railway stations or in railway offices.

Asking your pardon for imposing these rambling thoughts upon you, I am, with personal regards,

Yours, very truly,

SLASON THOMPSON.

COPY OF LETTER AND PETITION OF GRIFFIN WHEEL COMPANY.

CHICAGO, ILL., *January 29, 1910.*

DEAR SIR: We, the undersigned, a self-appointed committee of Chicago business men, appeal to you, as one of Mr. Mann's business constituents, to sign the inclosed. As Mr. Mann is quite prominent in railroad legislation, the fact of a large number of business firms who furnish employment to a great number of his constituents appealing to him individually (as this is intended) will undoubtedly have great weight with him, and quite possibly with other Congressmen who will become aware of it.

The appeal represents nothing but your individual interests. A prompt return with your signature will greatly oblige the committee.

Yours, truly,

AMERICAN STEEL FOUNDRIES,  
By WM. V. KELLEY, *President.*

AMERICAN BRAKE SHOE AND FOUNDRY COMPANY,  
By J. B. TERBELL, *Vice-President.*

BLUE ISLAND ROLLING MILL AND CAR COMPANY,  
By F. H. NILES, *President and General Manager.*  
GEO. CARR, *Vice-President.*

BY-PRODUCTS COKE CORPORATION,  
By MASON H. SHERMAN, *General Manager.*

DEARBORN DRUG AND CHEMICAL WORKS,  
By ROBT. F. CARR, *President.*

FEDERAL FURNACE COMPANY,  
By W. L. BROWN, *President.*

FEATHERSTONE FOUNDRY AND MACHINE COMPANY,  
By C. D. PETTIS, *Vice-President.*

GRIFFIN WHEEL COMPANY,  
By T. A. GRIFFIN, *President.*

IROQUOIS IRON COMPANY,  
M. COCHRANE ARMOUR, *President.*

PICKARDS BROWN & Co.,  
By C. N. BOYNTON, *Vice-President.*

ROGERS, BROWN & Co.

RAILWAY STEEL SPRING COMPANY,  
By W. H. SILVERTHORN, *President.*

SHERWIN WILLIAMS & Co.,  
By R. W. SAMPLE, *District Manager.*

WILLARD SONS & BELL COMPANY,  
By L. C. WILLARD, *Secretary.*

CHICAGO, January 29, 1910.

Hon. JAMES R. MANN, *Washington, D. C.*

DEAR SIR: The undersigned, doing business in your district, believing that you desire to protect and advance the interests of your constituents in every proper way, submit the following request:

We would have you do all that you can to call a halt on all radical railroad regulation in this Congress.

Without questioning the merits or demerits of the railroad legislation proposed by you, or others, we believe that no harm can be done by limiting much of the proposed railroad legislation, and giving railroads opportunity to work out or demonstrate their intention of carrying out railroad legislation already in effect.

We know that we have suffered greatly in our business during the past two years, largely on account of the poor financial condition of railroads. Six months ago that condition improved; we all have noted how promptly business picked up. During the past three months it has gradually dropped off, with relatively decreasing new business in sight, and again some of us are laying off our men, and some of us have stopped putting our idle plants in order for resumption, and all because of the volume of threatened disturbing congressional legislation. Do not think that we are doing this for the sake of the railroads, or that they are urging our actions. We need no spur to wake us up to our condition. We want our Congressmen to help us, and under the circumstances think it is their duty to do it.

We know railroad legislation has been necessary, but it has reached a point where it is excessive and is crippling us and the whole business community.

Yours, truly,

FORT WAYNE, IND., January 10, 1910.

JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

DEAR SIR: We note with much interest that you have introduced a railroad-rate bill in which we are very much interested. We do not note that you have gone into it as far as our President has in the way of recommending a commission facilitating the handling of matters of this kind or whether you have inserted in your bill a clause compelling railroads to transport commodities according to the rates named in the bills of lading issued against such shipments. We have recently been obliged to present bills for overcharges resulting from overcharge on shipments of May, 1909, and under the rules of the Interstate Commerce Commission and of the railroad companies covering refunds we have been compelled to secure the original bills of lading. By all the modern means of evasion and inattention the railroad companies have succeeded in keeping us out of the possession of these bills of lading, which were in their files and where their agent in New Orleans could have put his finger on them without five minutes' notice. In this way we have been unable to get all these bills of lading returned until a few days ago or at the close of the year 1909. We have now started the claim on its way to get the proper signatures for refund, and this will also require quite a number of days or weeks to secure the same. It would seem therefore that in all probability it will require one year's time or more to secure a refund of about \$200 on 9 cars of hay, which were overcharged. We are citing this instance particularly for your attention in order to give you somewhat of an idea of the feeling in the country among shippers generally in regard to this matter and in order that you may be thoroughly awake to the importance of having some proviso in your bill which will absolutely compel the railroad companies to collect and demand only the amount of freight as stipulated in the bill of lading, which constitutes and is the contract between the shipper and the transportation company. We shall be glad to have a full copy of your bill as soon as the same is printed and ready for distribution, and wish to thank you in advance for any courtesies you may show us in this direction.

Very respectfully,

S. BASH & Co.

P. S.—You possibly are aware of the fact that the railroad companies have done everything they could through their agents and general managers to make the present interstate commission law and the rulings in reference to refunds on overcharges just as odious to the shipper as they could make it. They have done this for the purpose of trying to secure public sympathy and sentiment against the present Interstate Commerce Commission. It is needless to say they have only aggravated matters and made the feelings on the part of the public more intense than it ever was before.

NEW YORK CITY, February 9, 1910.

*To the Committee on Interstate Commerce, Washington, D. C.*

GENTLEMEN: I am a stockholder in a number of railways and wish to lay before you in my humble capacity as a citizen of the United States a few suggestions bearing on the issues mentioned in proposed railway legislation now before your committee as I understand it. I spent some fifteen years in the railway and steamship work and got some bitter experience therein. I believe in government regulation along workable lines, but so much legislation is being proposed which substitutes the officials of the Government for the officers and directors of the companies, and in some cases the stockholders even, without due process of law or the Government acquiring any legal rights of ownership, as provided in the Constitution, whereby the Government must pay for property in advance before it attempts to run it, so to speak.

I wish to suggest a number of recent court decisions in the last year or two which very clearly outline the fact that some laws now being cited and proposed are hardly constitutional.

First, most railways exist by charters, which were legally granted by States. They mentioned certain rights all around, and in most cases limit the charges to the public. The Supreme Court in the recent case of the Twin City Railways, very clearly stated that a charter is a binding contract all around, and that the city councils could not pass laws compelling changes in fares, issuance of transfers, etc., without the agreement of the company, where the charter stated the limits, etc. Some day some stockholder, tired of holding stock for long years without dividends, will get up a case along these lines on some steam railway.

Some of the state railway commissions are authorized to pass on issues of stock, etc., as proposed in the national bill. If you will look at the decision of the New York court of appeals in the Delaware and Hudson bond-issue case, the court very clearly said that if the issues were within the charters, etc., the commission could not prevent, and above all could not assume the rights of the boards of directors of the companies, etc. A similar case applying in the national courts might meet with similar decision, if the Interstate Commerce Commission were empowered to try it on. There could be no objection to a law that gave the commission the right to see that the railways do spend the money for the things their reports say they intend to use it for, etc.

Since the Sherman antitrust law was passed your Congress has passed the Hepburn bill, etc. In Arkansas recently they put in a railway commission which passed on certain things, and then some one undertook to punish the railways under the antitrust bill in that State. The state supreme court decided that when the railway commission was put into existence the terms of the antitrust bill were canceled so far as it relates to railways. Possibly the same thing could be said now if ever some stockholder brings that point to the United States Supreme Court, claiming that the latest railway bills supersede the antitrust laws as relating to railways.

The city of New York is building some subways here. The city undertook to tillize and damage certain property without the usual due process of law, etc., compensation in advance, on the grounds that it owned the streets, etc. But the court of appeals decided that building a railway, etc., underground was not using the streets for the purposes they were originally dedicated to, and further that the city had only the rights of a railway corporation when it went into that business. Possibly the Government of the United States is in the same position when it undertakes to confiscate the rights of stockholders, etc., either by control without purchase or operation after purchase, if any stockholder ever gets his hearing in the United States courts on this point.

The Kentucky railway commission undertook to reduce all rates in Kentucky on a percentage basis some time ago, but the Supreme Court of the United States decided it could not arbitrarily do that sort of business even on purely intrastate rates.

The whole trouble has been, in my opinion, that Congress has undertaken to cure all the railway evils in one big bite out of the evolution of the past; has tried to have a handful of men be judge, jury, and prosecutor on all railway questions for a territory comprising some forty-six nations, more active than the whole of Europe in many ways. I can imagine the troubles of an interstate commerce commission appointed to regulate all of the railways of Europe, as we are trying to do in this country.

The Government should try to make railways live up to published tariffs, where complaints come to them; see that the railways keep honest records, and spend money exactly as their published reports say they do; try to settle the disputes between rival roads, sets of shippers, markets, and sections of the country, according to the conditions presented in each case, since no two are alike, through a commission, the same as the Government keeps supervision over other industries. Where anyone refuses, prosecute men in the courts in the good old way our fathers provided, instead of com-

panies, thereby punishing the guilty men and not the innocent and helpless stockholder. Think of how funny it would sound if the Government undertook to fine a bank out of its capital and surplus every time a dishonest cashier or other officer does something contrary to the law or good morals in business, and let the guilty cashier get away with his ill-gotten gains.

It takes time to build a road, to develop its territory, to induce settlers and industries to move in, etc., and I fail to see how you can cure all the ills incident thereto in a year or two, as seems to be the effort of Congress with frequent changes of laws touching fundamental things, instead of simply amending existing laws, as practice shows desirable, or as the courts outline.

The whole scheme of the new laws appear to me to be playing into the hands of strong companies and weakening the weaker ones, preventing competition by the building of new lines, etc., where existing lines hold rates too high after the territory builds up.

I have a fear that the drastic schemes proposed lately are so far toward the Government overreaching its powers, under our Constitution, that some day we will get a court decision knocking out the whole railway regulations as they now exist, since most of them are contrary to many decisions now given, as you will see by reading some of the decisions I have mentioned. I would rather see the regulation strengthened along sane and workable lines. When I come back from Europe I always wonder why we pound our railways, when one considers the rates, service, intense rivalry between States, markets, etc., when the railways pay in taxes an amount equivalent to about 3 per cent on their gross outstanding capital, some 6 per cent of their gross earnings, pay the highest wages, have the lowest rates by any methods you can figure, harassed by employees, shippers, States, and nation, and yet go on year by year increasing plants, etc. There are many dishonest and scheming men in the railway business, but possibly no more on a percentage basis than in other lines, and taking it all in all, I suppose the only way the poor share owners will ever get a fair show in this country is to form a union and do what all the other unions do—fight for their rights guaranteed to all by the Constitution. I fail to see why a millionaire railway stockholder who bought stocks dirt cheap, or his ancestors did, which enhanced in value with the growth of the country, is a criminal and constantly punished by fines, etc. Only about 5 per cent of our national wealth is in railway securities, and while the railway stockholders are getting rich on their 5 per cent of the total wealth, by growth of country and business, certainly the other 95 per cent of the total wealth is increasing just as fast or even faster, because no one tries to take 6 per cent per annum of the gross earnings of that 95 per cent from it each year in taxes, or allows nine men to say how fast it shall grow, or what it is worth, what it shall spend for improvements, etc.

I wish that some far-seeing Congressmen would have the stamina to come out just once and say that they would like to see things let alone for a year or two, until after some of the unsettled cases now in the United States courts are decided by the Supreme Court, so intelligent action can be taken thereafter, instead of ill-considered, unintelligent laws placed on the books in the meantime.

Yours, very humbly,

H. P. DIFFE.

HON. JAMES R. MANN,  
Washington, D. C.

CHICAGO, February 12, 1910.

DEAR SIR: I have no especial grievance against your bill, the President's bill, or any railroad bill now before Congress, but I deprecate them all. I will illustrate my reasons for this by the past condition of that part of my business (representing an investment of over \$2,000,000) which is confined to the congressional district represented by you, each plant having been operated at its full capacity during 1907, and the cost (based on the then cost) of wages approximated \$3.25 per ton, or \$1 per wheel, and wages have never been lower since. The actual output which we had in the East Kensington plant was 450 wheels per day and in the West Kensington 1,050 wheels, making a total output of 1,500 wheels per day, representing a pay roll of \$1,500 per day. We closed the works November 1, 1907, and from that date to the 1st of February, this year, were six hundred and seventy-two working days at the rate of 24 per month, and the output of 450 wheels in one plant and 1,050 in the other, used for these figures, was based on an actual output and not an actual capacity, which could easily be increased 10 per cent. Therefore, for the purpose of comparison, we had six hundred and seventy-two days in the twenty-eight months at an output of 1,500 wheels per day, which would have been done if conditions remained as they were, thereby representing a fair output of 1,008,000 wheels. As a matter of fact we manufactured in your district 27,000 wheels in all that time, and these 27,000 wheels were made at Kensington by taking them from our West Chicago shops in October, 1909,

leaving a corresponding space idle there; the reason being that we confidently hoped at that time that there would be a revival of business, and we wished to prepare a unit of an organization that had been scattered for more than two years, so that when the business came, as we fully expected, we could increase our organization much more rapidly and efficiently from a 20 per cent operating force than we could from a totally idle plant and no labor organization. But leaving that out of the question and deducting the 27,000 wheels we did make from the 1,008,000 we should have made leaves a total of 981,000 wheels which are forever lost to us and \$981,000 in pay which is forever lost to our workmen in your congressional district. And as the car wheels constitute but 10 per cent of the car, and all these cars are built in your district, it is not unreasonable to suppose that there was nine times as much labor lost from the other parts of the car, making in all a total of between \$7,000,000 and \$8,000,000, and which would have been largely distributed amongst the merchants and other small business men in the same district; and this is making no mention of the large amount of labor that is employed in other parts of the State and your district producing our raw material (notably the Iroquois Furnace Company, which supplied us with iron), and this constitutes the sole reason for our taking the active part that we have in trying to better ourselves.

"We venerate the pledges of the President and the Republican party, but for ourselves and workmen dare to plead." (With apologies to Logan.)

Very sincerely, yours,

T. A. GRIFFIN.

THE LAKE SHORE ELECTRIC RAILWAY COMPANY.

*Sandusky, Ohio, February 16, 1910.*

HON. PAUL HOWLAND,

*Member House of Representatives, Washington, D. C.*

DEAR SIR: I wish to call your special attention to H. R. 17536, introduced in the House of Representatives by Mr. Townsend, January 10, 1910, concerning the creation of an interstate commerce court and the amendment of the act entitled "An act to regulate commerce."

On page 18, lines 20 to 23, inclusive, prohibit the Interstate Commerce Commission from establishing through rates between interurban and steam roads. We feel that that part of the bill prohibiting the Interstate Commerce Commission from establishing joints rates between steam and electric railroads is against the interest of the traveling public, the patrons of the interurban railroads, and the prosperity and development of such interurban roads.

The Lake Shore Electric Railway Company has many points along its railroad where passengers do not take its cars to go to a near-by town or junction with a steam railroad to make their journey, for the reason that they can not buy a through ticket to their destination nor can they get their baggage checked to their destination, but, on the other hand, are required to travel upon the trains of our steam road competitors, who operate not more than two or three trains a day, affording very little train service as compared with the Lake Shore Electric Railway. The steam railroads working together and against the electric railroads in a case of this kind not only injure the electric railroads but inconvenience the traveling public. The traveling public under such circumstances do not get all the available benefits that are in store for them.

There are also a number of points on this property where we have a large exchange of passenger traffic between this company and steam roads. In these instances it is now necessary for the travelers to purchase two tickets and have their baggage checked twice to reach their point of destination, and oftentimes are compelled to have their baggage transferred. These travelers are therefore receiving only a part of the advantages to which they are entitled when, on account of the convenience to them, they use an interurban and a steam road, while the steam roads between themselves extend these advantages to the traveling public.

I wish to say, however, that we have traffic arrangements with three different steam roads whereby through tickets are sold and baggage checked in exactly the same manner as the steam roads do among themselves and in these cases the public are receiving all the benefits.

Looking at this matter broadly, it would seem to us that the portion of section 9, above referred to, should be amended so as to give the Interstate Commerce Commission authority to order through rates and through tickets as between interurban and steam roads, if in their judgment it was proper and advantageous to the public.

If I have not made myself clear on the matter, I should be glad if you will advise me and I will endeavor to explain more in detail.

I trust you will interest yourself in this matter, because I feel certain that if you do so you can see the justice of this request.

Yours, truly,

F. W. COEN.

*Vice-President and General Manager.*

FEBRUARY 22, 1910.

HON. ANDREW J. PETERS,  
House of Representatives, Washington, D. C.

DEAR MR. PETERS: I have already sent you certain official figures from the railroad commissioners' report of Massachusetts relative to the small amount of freight or express business done by the Massachusetts street railway companies. Those figures, you may remember, showed that the receipts of the companies in Massachusetts from the sources indicated were less than 1 per cent of their gross receipts.

I have now obtained similar figures, based on the proposed census report relative to street railways. These figures are not authoritative Census Department figures, nor is that department responsible for them. I nevertheless believe that they are approximately accurate and will be substantially confirmed by the census report on street railways when issued. These figures relate to 939 companies, and include not only street railways, but interurban roads. The sources of their total operating earnings, which amount to \$418,187,858, are classified as follows:

Passengers.....	382, 132, 494
Chartered cars.....	705, 261
Freight.....	5, 231, 215
Mail.....	646, 575
Express.....	1, 560, 802
Sale of electric current.....	20, 093, 302
Miscellaneous sources.....	7, 818, 209

You will notice that the receipts from freight, as distinguished from mail and express, are but a small fraction over 1 per cent of the gross receipts. Including mail and express with freight, the receipts from all three sources are less than 2 per cent of the gross receipts.

The sale of electric current is an item of some significance which may interest you. Many of the companies furnishing street railway transportation are equally electric light and power companies, manufacturing and selling electric current for use in the different cities and towns in which they also operate street railways. This would seem an additional reason for excluding street railways from the proposed legislation, if the avoidance of further complications between federal and state jurisdiction and control is desired.

Sincerely, yours,

BUCKLEY W. WARREN.

SHORT POINTS RELATING TO LEGISLATION AFFECTING WATER ROUTES AND ILLUSTRATING  
THE INTERDEPENDENT RELATIONS BETWEEN FREE WATERWAYS AND FREE WATER  
ROUTES.

[Supplement to brief prepared by Daniel H. Hayne.]

1. That the tendency toward interfering with natural, competitive, and economic laws, where there are no abuses to correct, is destructive.
2. That natural and open highways should be as free to the people as the air they breathe.
3. That bound to this principle are the vehicles of transportation using such free and open highways. It is the God-given union of the ship and her husband, one and inseparable, the one dependent on the other in giving their benefits to the people. If left untrammelled by inelastic, artificial, narrow laws, they are the natural regulators of rates.
4. That such water interests operate under fundamental natural laws without unfair disadvantage or friction and with their evolutions toward higher and better standards.
5. It is not cheap transportation, but prompt, efficient, and, above all, safe transportation which the people demand.
6. Opening the doors to the possibility of unreasonably cheap service presents the same condition which threw so many rail lines into receivers' hands ten years ago. A community unable to support many competing parallel lines suffers in the end by the struggle of weaker lines for existence.
7. It is impossible and beyond human power to improve on nature's own way by inelastic and often unwise laws, seeking by artificial, drastic, and experimental legislation to deal with varying complicated future economic situations which may arise.
8. This is in effect saying that water transportation (being free of abuses and working along natural lines without artificial obstruction) is surrounded by checks and balances containing their own inherent corrective rules.
9. The issue is between evolution through nature's own laws as against revolution through human interventions often established in the laws in great haste without full

consideration as to where they will lead, and, conflicting as they may be, by patches here and there through demands of special influence.

10. The commerce laws were established by the people for their protection and to correct the then existing abuses.

11. They were not intended to establish privileges through governmental intervention at the instance of any transportation or special interest.

12. They are the laws of the people and are not designed to settle differences between the carriers themselves which arise through inefficient management or through any other design.

13. There is no public demand to hamper and blight the water routes—per contra the definitely expressed policy is otherwise.

14. It seems inconceivable that there could be any such public demand without public manifestation; we must then look deeper for the cause of this harmful agitation.

15. Where no abuses exist there can be no reason for regulating laws, except those developed by natural, healthy, and free competition, nor until the public demand is unmistakable.

16. The effort is constantly being made to encourage and upbuild the merchant marine, as instance the enormous expenditure for improving channels, which will reach probably \$45,000,000 and over per annum.

17. The work of prior Congresses sought means to foster and upbuild waterways and water routes, and this vast expenditure is being made with that end solely in view.

18. Along other lines toward the same ends witness:

(A) The great effort expended through the bureau of navigation.

(B) The conference of governors at the instance of the President of the United States.

(C) The work of the Waterways Commission.

(D) The work of the commission seeking the conservation of national resources.

(E) The effort, indorsed by the present administration, to pay for the continuance and uplifting of the merchant marine through the means of subsidy.

All of which tends to illustrate the intensive effort to remove restrictions, rather than to add them, to the great marine interest of this country, which has constantly declined through interfering laws and mistaken policies of the Government.

19. The present tendency in the proposed amendment is pregnant with peril and tends to the imminent danger of complete effacement of the independent water routes.

20. The time-honored policies of this Government are, through inadvertence, in danger of a revolutionary reversal, ostensibly in the interests of the people, but which may be traced to other activities.

21. Water routes have been sufficiently harassed by attempting to include them in legislation intending to correct abuses of one class of transportation without taking into consideration the vast difference between the two classes of transportation, (a) one being based on artificial, monopolized, and closed rights of way, (b) the other on natural, free, and open highways, which does not lead to the abuse at which the commerce acts are aimed, but rather toward correcting them.

22. The policy of the people is to keep the vessel safe, but to facilitate her employment.

23. To limit the free field of operation is such a blow at the ancient and present policy of the people that legislation to that end would excite public amazement.

24. It seems to be the popular view that any act or amendments of the commerce acts seeking to regulate the abuses of one branch of the service (the land carriers) should be kept free from hurtful embarrassment of the other class of service (the water carrier), a service vastly more complicated than that by land.

25. Whatever may be the wisdom in the further regulation sought against the land carriers, it is our sense that the water carriers should be left untrammelled by artificial laws until the methods applied against the land carriers pass beyond the experimental stage and that any laws touching water carriers should be considered separately and when all of the intricate problems surrounding the merchant marine may be fully, leisurely, and carefully investigated.

#### SOME OF THE PRINCIPAL DIFFERENCES BETWEEN A COMMON CARRIER AND A PRIVATE CARRIER BY WATER.

*Common carrier by water.*—A line or vessel operating between fixed termini, holding out to take freight as offered. This includes mainly regular lines with high standards and a few sailing vessels, so situated as to be possible to be reached by legislation.

*Private carrier by water.*—A line or vessel not having fixed termini and not offering or required to accept freight unless willing to do so. This includes the wild carrier, the tramp carrier, the charterer of hull and a mass of sailing vessels and small boats.

The independent regular water line is one offering high-class service on schedule with latest safety appliances, working under a differential lower than the rails.

Private water carrier may have good or bad standards, may be in business for a day or more, elusive and intangible, so far as the application of the law, and is not covered by the commerce act. This class includes the wild carrier, sometimes designated a "free lance;" the tramp vessel, sometimes designated "pirate;" the charterer of a vessel, usually a common carrier, sometimes with its own motive power, at other times a barge or vehicle in tow, the barge being usually a private carrier, and the towboat usually but not always a common carrier, but bound only to the charterer and not to the cargo or freight contracts.

The regular water line with the high-class service the public demands having on the one side intensive rail competition, both on through and on local traffic, with the ability of the rails to offer unreasonably cheap rates at the cost of rail interior business.

On the other hand, regular lines subjected to even more serious competition, through the private carriers named (not covered by the act), and irresponsible, weak, regular water lines pursuing policy of letting vessels run down with effect to lower standards of service. The rails have their local territory from which they can demand sufficient to make up for port losses. The regular water line has no strictly local business. It is all intensively competitive with all rail and also water.

Regular lines with standard high-class service must either voluntarily relinquish their position or reduce their standard under an unequal struggle for existence, unless natural economic laws are permitted to have their full and uninterrupted course.

HOUSE OF REPRESENTATIVES,  
Washington, February 22, 1910.

HON. JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce.*

SIR: Referring to H. R. 3046, now before your committee, "requiring railroads and other common carriers engaged in interstate commerce to make prompt acknowledgment and adjustment of claims for overcharges on freight and for loss and injury to same," I respectfully suggest that an amendment to section 3 of the bill after the last word ("brought") in said section, as follows, would provide for the jurisdiction of cases arising under the act, to wit:

"This act shall not be construed as excluding the exercise of a concurrent jurisdiction of cases arising under the act by the courts of the several States."

I respectfully submit that if your committee has a conviction that the bill as thus amended would be unconstitutional, of course I can not insist on a favorable report thereon. But if the committee should merely entertain a doubt of the constitutionality, I ask that the bill be favorably reported, and if the common carriers to be affected by its operation doubt its constitutionality they can have that question decided by the courts of the country, as many other similar questions are.

If the state court does not have jurisdiction of cases that may arise under the act then but few, if any, shippers could legally establish their claims, as the district federal court has no jurisdiction of claims less than \$2,000.

As to the necessity of Congress passing this bill or a similar one, I respectfully call the attention of the committee to the frequent and common complaints of shippers of the delay of common carriers, and more particularly of railroads, in settling claims against them for overcharges and for loss or injury to property while in their charge. And especially do I invite the attention of your committee to opinion No. 1088 of the Interstate Commerce Commission in the case of Tyson & Jones Buggy Company against the Aberdeen and Asheboro Railway Company et al., and in which Mr. Harlan rendered the opinion, herewith forwarded for the information of the committee and marked "Exhibit A." As will be seen, Mr. Harlan intimates that unless carriers will do what is fair and just to the shippers Congress may be called on to compel them to do so.

Very respectfully,

GEO. W. GORDON.

#### EXHIBIT A.

[No. 2785. Tyson & Jones Buggy Company v. Aberdeen and Asheboro Railway Company et al. Submitted September 16, 1909. Decided December 7, 1909.]

1. Complaint of an overcharge dismissed, the defendants having refunded the amount, but only after formal complaint had been made and copies served upon them.
2. Carriers criticised for their lack of prompt attention to plain overcharge claims and for their delay in adjusting them.



G. M. Stephen for complainant.

Henry A. Page for Aberdeen and Asheboro Railway Company.

J. L. Eysmans for Cumberland Valley Railroad Company.

Charles Heebner for Philadelphia and Reading Railway Company.

Jackson E. Reynolds for Central Railroad Company of New Jersey.

#### REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

Without entering into the details of this complaint it will suffice to say that, as presented on the pleadings, it involves a small overcharge upon a shipment of iron wagon axles made by the complainant in November, 1907, from Wilkes-Barre, in the State of Pennsylvania, to Carthage, in the State of North Carolina. The overcharge resulted from the inadvertent collection at destination of the fourth-class instead of the fifth-class rate, as required under the published tariffs of the defendants for a portion of the haul. The complainant, being advised of the fact that the fifth-class rate was the legal rate, made demand upon the Aberdeen and Asheboro Railway Company, the delivering carrier and principal defendant, for a refund of the overcharge. That company, although it had collected the charges on the shipment, apparently declined to investigate the matter at all, and contented itself with referring the complainant to the several carriers back along the route of the movement to the point of origin. After a rather extensive but fruitless correspondence in relation to the matter the complainant called it informally to the attention of the commission. No result followed from our efforts to get the serious attention of the principal defendant to the complainant's claim. Finally this formal complaint was filed. Promptly after copies of the complaint had been served upon the defendants and they had thus been put in a position where they were compelled to look into the matter it was ascertained that the complainant's contention was well founded and the amount of the overcharge was at once refunded.

In moving the dismissal of its petition the complainant advises us that it has a number of such claims still pending with various carriers, the settlement of which it has been unable to secure notwithstanding its earnest efforts in that behalf, and it asks that some action be taken by the commission in order that shippers may secure more prompt adjustment by carriers of overcharge claims. An order will be entered dismissing the complaint upon motion of the complainant; but we think the time has come for some comments by the commission in relation to the practice of carriers in such matters.

From shippers in all parts of the country, and from local traffic associations which are making earnest efforts on fair and reasonable lines to secure a reform in the practices of carriers in this regard, many complaints have been received during the past year of the inattention of carriers to plain overcharge claims and of their delay in adjusting them. And a survey of these complaints has led us to the conclusion that this practice, or rather lack of practice, among carriers is open to severe criticism.

A substantial portion of the time and labor of this commission is given to the effort to secure, through informal correspondence, the settlement of claims of this character, and it is a burden from which we ought to be relieved by carriers. On the other hand, from the shippers' point of view, nothing in connection with transportation is more vexing and irritating than the labor and delay incident to the following up of an overcharge claim and securing its repayment. When an undercharge occurs it is promptly discovered by the accounting departments of carriers when revising the billing, and demand is at once made on the shipper for payment. With equal facility overcharges are also detected by accounting officers. But from the complaints that reach us it seems to be the duty of no one in the interior organization of many carriers to see that the amount is refunded to the shipper. And when an overcharge is detected by a shipper himself, he is able in the great majority of cases, if we may form conclusions from the numerous complaints now before us, to secure its repayment only after his patience has been sorely tried by the effort and delay required in order to secure serious attention to his demand.

Without wishing to be understood as expressing the view that this loose practice with respect to overcharge claims is characteristic of all interstate carriers, it is nevertheless so common as to justify some attention by the commission. Apparently it is not understood as fully as it should be, by railroad officials charged with the adjustment of such matters, that the retention by a carrier of an overcharge not only has all the effects of an unjust discrimination against the shipper from whom the excess has been demanded, but leaves the transportation transaction in an unlawful condition, both under the act to regulate commerce and under the Elkins Act, until the overcharge has been adjusted. We are advised that the delay in making repayment is frequently due, not to the failure to discover the overcharge, but to the efforts of the

delivering carrier to ascertain before making the refund to the shipper which carrier participating in the movement is responsible. This is not a proper practice. The shipper is entitled to repayment from the carrier that has collected the freight charges as soon as it appears that an overcharge has in fact been made. When the refund has been made it is then that carrier's duty to see which of the carriers that participated in the movement is responsible and charge it accordingly. When the overcharge has been discovered it should immediately be repaid by the carrier that collected the charges, and this should be done whether a demand has been presented by the shipper or not.

We well understand that the adjustment of claims is a matter that requires time and that they can not safely be paid until after the facts have been fully investigated. But in our judgment the claims offices of carriers should be so organized as to enable them to dispose of all overcharge claims within thirty days, except those of unusual or special character, and such claims ought to be disposed of within sixty days at the utmost. We refer now to plain overcharge cases. The phrase "overcharge" as used by the commission embraces only cases where carriers have demanded and received a rate in excess of the published rate. We do not use that phrase in referring to cases where the published rate has been collected but is alleged on one ground or another to be an excessive rate. As to the latter class of claims, many of which are adjusted informally by the commission, it seems to us that the complaints of shippers ought to be investigated and put before us for disposition within ninety days in the great majority of cases.

The amended act to regulate commerce gives the commission no authority to establish any limit of time for the adjustment of claims or any authority to discipline carriers that are not attentive to their plain duty in such matters. The adjustment of claims, however, is a matter which the carriers themselves, in good faith to the shipping public, ought to take hold of so as to reach results within a reasonable time; and we shall expect the cordial cooperation of all carriers in our request that their claims departments be so organized as to give more prompt results, to the end that all occasion for the well-founded complaints that shippers now make may be removed. Carriers owe it to themselves not to put the commission under the necessity of calling this matter to the attention of the Congress and asking for power to compel them to do what, in their own interest and in fairness to shippers, should be done on their own initiative.

[Order. At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 7th day of December, A. D. 1909. Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners. No. 2785. *Tyson & Jones Buggy Company v. Aberdeen and Asheboro Railway Company et al.*]

Upon consideration of the record in the above-entitled case and complainant's application to dismiss, from which it appears that the claim involved in the complaint was for reparation in the sum of 20 cents, resulting from the collection of the fourth-class rate on the shipment covered by the complaint, when in fact a fifth-class rate was applicable thereto; that upon the filing of the complaint and service of the answer, the Southern Railway Company, one of the intermediate carriers participating in the traffic in question, paid to complainant the amount of said overcharge in satisfaction of said complaint; therefore

*It is ordered*, That the complaint in the above-entitled case be, and it is hereby, dismissed.

WASHINGTON, D. C., February 23, 1910.

HON. JAMES R. MANN,  
*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

DEAR SIR: In response to your oral suggestion of yesterday I beg leave to make the following recommendations, addressing myself to committee print H. R. 17536:

Section 8. In my opinion, unless provision is made for reparation to shippers of the losses incurred by reason of misstatements of rates, shippers will not furnish information against railroad officials or employees. To give this section practical effect, in my opinion it is necessary that provision be made that shippers may be reimbursed by order of the commission.

Section 9. I would respectfully call your attention to the fact that no penalty is provided in case of failure of the railways to route as per shipper's instructions. It seems to be necessary, in order to make this section effective, that a fine should be imposed upon the carrier failing to follow shipper's instructions.

Section 12. In my opinion it is of vital importance that the provisions of this section should be made to apply to competing water carriers as well as to competing railroads. It is, if possible, even more important that railroads be prevented from controlling their competitors on the water than those on the land, and the growing tendency of railroads, through the ownership or control of their water competitors, to raise the rates of the latter up to the level of the rail rates is destructive of the advantages otherwise inherent to cities located on navigable waters. A striking example of this tendency is found in the situation to-day existing as regards the transportation of package freight between Chicago and Buffalo. (See report of the Chicago Harbor Commission, March, 1909.)

Referring to section 4 of the act to regulate commerce as at present in force, in my opinion the words "under substantially similar circumstances and conditions" should be eliminated, inasmuch as the proviso in this section very properly places in the commission's hands the determination of what constitutes exceptional circumstances and conditions justifying the lower charge for the longer haul.

Respectfully submitted.

WM. R. WHEELER,  
*Manager Traffic Bureau of the  
Merchants' Exchange of San Francisco.*

( )

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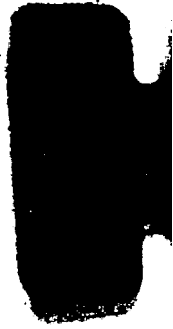












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